Comptroller of the Currency
Administrator of National Banks

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Background

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of the Treasury. The OCC is headed by the Comptroller who is appointed by the President, with the advice and consent of the Senate, for a 5-year term.

The OCC regulates national banks by its power to:

- Examine the banks;
- Approve or deny applications for new charters, branches, capital or other changes in corporate or banking structure;
- Take supervisory actions against banks which do not conform to laws and regulations, or which otherwise engage in unsound banking practices, including removal of officers, negotiation of agreements to change existing banking practices, and issuance of cease and desist orders; and
- Issue rules and regulations concerning banking practices and governing bank lending and investment practices and corporate structure.

The OCC divides the United States into six geographical regions, each headed by a Deputy Comptroller.

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The Comptroller

Stephen R. Steinbrink has been Acting Comptroller of the Currency since March 1, 1992.

By statute, the Comptroller serves a concurrent term as a Director of the Federal Deposit Insurance Corporation and the Neighborhood Reinvestment Corporation. The Comptroller also serves as a member of the Federal Financial Institutions Examination Council.

Mr. Steinbrink joined the OCC in 1967 in Kansas City, Missouri, and was commissioned as a National Bank Examiner in 1970. In 1983, he was appointed Director for Bank Supervision/Regional Banks for the Southwestern District Office. Prior to his appointment as Acting Comptroller of the Currency, he also served as Deputy Comptroller for Multinational Banking and Senior Deputy Comptroller for Bank Supervision Operations.

Mr. Steinbrink is a native of Falls City, Nebraska, and is a 1967 graduate of the University of Nebraska.

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Quarterly Journal

Office of the Comptroller of the Currency

Stephen R. Steinbrink

Acting Comptroller of the Currency

The Administrator of National Banks

Contents

Operations of National Banks

Preliminary second quarter 1992 operating results of 3,691 national banks showed continued improvement in profitability and capital levels for most national banks. However, the percentage of noncurrent loans in national banks' portfolios continues to exceed historical levels. These problem loans cast a cloud over future bank earnings. The continued high level of noncurrent real estate loans is particularly disturbing because banks have already taken sizable losses on real estate loans and have moved many problem real estate loans out of the loan portfolio.

National Bank Profits Continue to Improve

Second quarter results indicate that the recovery in national bank profits that began late in 1991 continues. National banks reported aggregate profits of $4.40 billion for the second quarter of 1992, $.45 billion higher than first quarter earnings and $2.36 billion higher than earnings in the second quarter of 1991. Only 277 national banks reported losses for the first half of 1992. This is substantially fewer than the number that reported losses in the first half of any of the past five years.

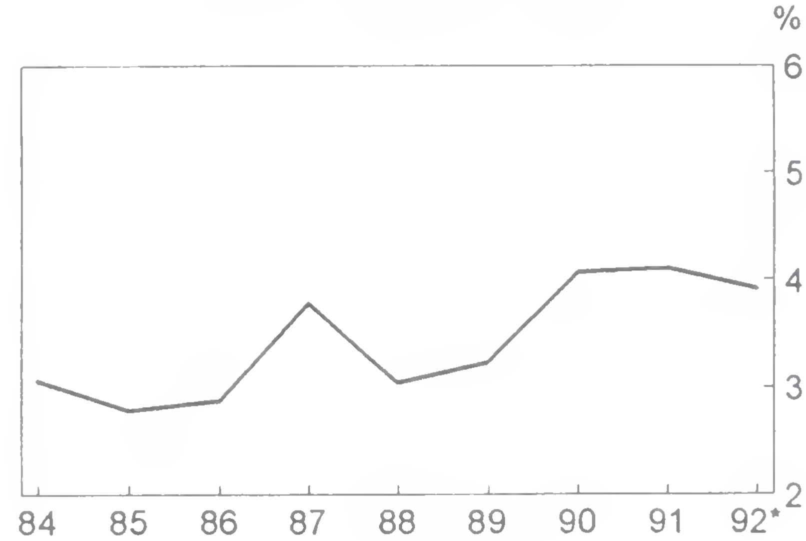
The increase in earnings translates into an improvement in the profitability and capitalization of national banks. Annualized return on average equity (ROE) for the first half of the year climbed to 13.1 percent, compared with 8.2 percent for the same period in 1991 and an average annual rate of 8.9 percent over the last ten years. Similarly, the annualized first-half return on average assets (ROA) was .88 percent compared with .51 percent in the second quarter of 1991.

Equity capital at national banks increased by $5.9 billion in the second quarter for a total increase of $9.8 billion since the end of 1991. With total assets down less than 0.5 percent, capitalization (the ratio of equity to assets) increased to 6.9 percent, the highest ratio for any quarter in over 10 years. Regulatory capital ratios also increased. The aggregate leverage ratio of national banks rose from 6.25 percent at the end of the first quarter 1992 to 6.56 percent at the end of the second quarter. The aggregate risk-based capital ratio for national banks increased from 10.41 percent in the first quarter to 10.88 this quarter.

Credit Quality Problems Persist

Despite the improved performance of national banks, problems in banks' loan portfolios continue to act as a damper on bank earnings and activities. While credit quality has improved slightly in recent quarters, substantial amounts of problem loans continue to burden national banks. After reaching a peak of $55.1 billion in the first quarter of 1991, noncurrent loans fell by $4.7 billion over the rest of 1991. In the first half of 1992, noncurrent loans continued to fall, declining by an additional $3.2 billion to $47.1 billion. But, because the total volume of loans held by national banks also fell, the ratio of non-current loans to total loans declined at a much slower rate. It fell from 4.39 percent in June 1991 to 4.10 percent at year-end 1991, to 3.91 percent at the end of June 1992.

Noncurrent loans to loans



Noncurrent real estate to real estate loans

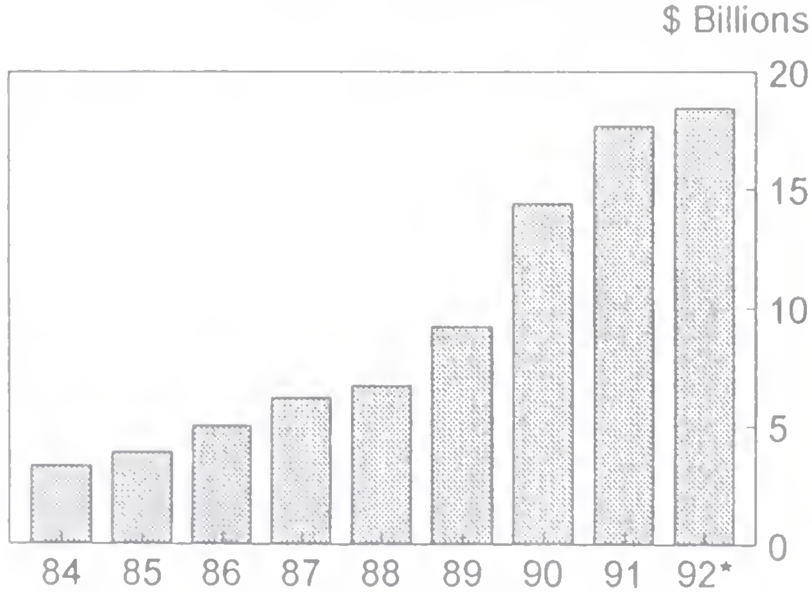
*Data for 1992 are as of June 30; data for all other years are as of December 31

Real Estate Loans Continue to Dominate Banks' Problems

Real estate credit quality has improved somewhat, with the ratio of noncurrent to total real estate loans falling from 5.67 percent to 5.22 percent over the past 12 months. However, real estate loans continue to be the major contributor to credit quality problems at national banks. While real estate loans accounted for 41.5 percent of national bank loans, they made up 55.4 percent of all non-current loans at the end of the second quarter.

The level of noncurrent real estate loans remains high despite the fact that banks continue to resolve real estate loan problems by recognizing losses and repossessing real estate. During the first half of 1992 noncurrent loans declined by $.82 billion to $26.10 billion. At the same time, net real estate loan losses were $2.59 billion and other real estate owned (OREO) increased by $.77 billion to $18.44 billion. This implies that, in addition to dealing with already identified nonperforming real estate loans, more real estate loans are being identified as nonperforming.

Other real estate owned



Real estate loan losses

* [illegible] other years are as of [illegible]

Portfolio Changes Continue: Securities Holdings Increase

Total loan volume at national banks continued to fall in the second quarter, dropping $9.2 billion to $1,204.9 billion. It was the seventh consecutive quarterly decline in the volume of outstanding loans. Total loans have declined $22.7 billion or 1.9 percent in 1992. National bank holdings of investment securities continued to rise, increasing by $8.3 billion in the second quarter to $381.3 billion.

Condition of the Largest Banks Continues to Improve

All size classes of national banks continued to report improved performance in the second quarter, including an increase in reserve coverage and a decline in the percentage of noncurrent loans compared with a year ago. The improved performance of larger banks, those with assets over $1 billion, account for most of the increase in the earnings of national banks. The earnings of these banks increased from $2.99 billion for the first half of 1991 to $6.33 billion in the first half of 1992. The improved earnings for larger banks were due primarily to an increase in net interest income and a decline in loan losses compared to the same period a year ago.

Mark Winer
Banking Research and Statistics

Aggregate Performance Data For National Banks
(data through second quarter of each year)

	1987	*1988*	*1989*	*1990*	*1991*	*1992*
Industry Structure						
Number of Banks	4,724	4,460	4,270	4,051	3,901	3,691
Number of Banks with Losses	988	730	570	544	545	277
Number of Failed/Assisted Banks	38	28	51	68	26	14
Income Statement ($ Billions)						
Year-To-Date						
Net Income	-4.91	4.66	8.33	5.84	5.00	8.52
Net Interest Income	28.62	30.40	33.37	33.31	34.69	37.32
Noninterest Income	11.72	13.58	15.37	16.94	18.15	19.69
Noninterest Expense	28.27	30.42	32.16	33.95	36.21	38.06
Loan Loss Provision	16.85	6.51	5.23	8.25	9.90	7.99
Securities Gains, Net	0.65	0.28	0.13	0.11	0.48	1.09
Extraordinary Income, Net	0.07	0.17	0.26	0.08	0.38	0.18
Net Loan Loss	4.44	6.58	5.88	9.78	9.82	7.31
Second Quarter						
Net Income	-7.77	2.43	4.01	2.54	2.04	4.40
Net Interest Income	14.56	15.39	16.75	16.81	17.53	19.06
Noninterest Income	5.95	6.75	8.01	8.46	9.29	10.20
Noninterest Expense	14.48	15.30	16.48	17.30	18.41	19.58
Loan Loss Provision	14.19	3.14	2.82	4.28	5.35	3.74
Securities Gains, Net	0.22	0.07	0.11	0.04	0.21	0.36
Extraordinary Income, Net	0.00	0.11	0.11	-0.03	0.04	0.08
Net Loan Loss	2.25	3.83	3.34	5.55	5.70	3.52
Performance Ratios (%)						
Year-To-Date						
Return on Equity	-9.94	9.23	15.03	10.09	8.21	13.10
Return on Assets	-0.57	0.52	0.89	0.60	0.51	0.88
Net Interest Margin	3.35	3.42	3.58	3.41	3.53	3.84
Loss Provision to Loans	3.14	1.13	0.86	1.30	1.59	1.33
Net Loan Loss to Loans	0.83	1.14	0.97	1.54	1.58	1.21
Noncurrent Loans to Loans	3.94	3.55	3.20	3.45	4.39	3.91
Loss Reserve to Loans	2.85	2.81	2.34	2.40	2.65	2.82
Loss Reserve to Noncurrent Loans	72.30	79.02	73.03	69.56	60.32	72.04
Loans to Assets	62.73	63.96	64.40	63.98	63.54	61.11
Loans to Deposits	82.03	84.66	85.23	83.43	81.36	78.25
Equity Capital to Assets	5.67	5.71	6.01	6.03	6.31	6.93
Estimated Leverage Ratio	N/A	N/A	N/A	N/A	5.99	6.56
Estimated Risk-Based Capital Ratio	N/A	N/A	N/A	N/A	9.67	10.88

0.00 indicates an amount of less than $5 million.
Banking Research and Statistics

Aggregate Condition Data For National Banks, 1987-1992

(data through second quarter of each year)

	1987	*1988*	*1989*	*1990*	*1991*	*1992*
Balance Sheet ($ Billions)						
Assets	1,712.02	1,797.19	1,893.23	1,980.05	1,961.20	1,971.59
Loans	1,073.93	1,149.43	1,219.23	1,266.92	1,246.23	1,204.86
Real Estate (RE)	332.42	382.92	437.40	489.85	505.50	500.40
Commercial & Industrial (C&I)	362.78	375.11	383.52	388.83	366.90	338.34
Consumer (Cnsmr)	203.46	219.67	236.32	232.72	229.94	224.18
Noncurrent Loans	42.27	40.80	39.04	43.65	54.71	47.11
Noncurrent RE Loans	10.01	12.57	13.17	19.40	28.64	26.10
Noncurrent C&I Loans	19.11	15.17	13.89	15.00	18.41	14.20
Noncurrent Cnsmr Loans	2.35	2.56	2.72	2.85	3.26	3.23
Other Real Estate Owned	5.68	7.33	7.57	10.71	17.48	18.44
Investment Securities	258.62	271.08	284.21	311.89	328.87	381.31
Total Liabilities	1,614.92	1,694.51	1,779.45	1,860.60	1,837.46	1,834.92
Total Deposits	1,309.25	1,357.72	1,430.52	1,518.48	1,531.70	1,539.66
Domestic Deposits	1,100.57	1,158.91	1,235.51	1,314.26	1,342.47	1,346.28
Loan Loss Reserve	30.56	32.24	28.51	30.36	33.00	33.94
Equity Capital	97.02	102.61	113.70	119.37	123.75	136.67
Total Capital	N/A	N/A	N/A	144.12	151.91	163.73
Balance Sheet Changes ($ Billions)						
Year-To-Date Changes						
Assets	-28.46	27.27	47.06	3.98	22.69	-9.35
Loans	0.90	36.77	34.62	-4.12	-29.28	-22.65
Noncurrent Loans	11.45	-1.25	2.99	2.67	2.92	-3.23
Other Real Estate Owned	0.71	1.14	0.83	1.49	3.03	0.77
Investment Securities	5.23	1.32	9.07	17.56	16.06	21.29
Total Liabilities	-23.26	24.45	41.51	-1.71	-26.52	-19.14
Deposits	-11.28	9.24	15.43	15.73	-23.90	-30.23
Loan Loss Reserve	12.47	0.04	-1.31	-2.00	-1.13	0.21
Equity Capital	-5.20	2.83	5.54	5.69	3.83	9.80
Total Capital	N/A	N/A	N/A	N/A	2.83	8.90
Second Quarter Changes						
Assets	4.45	24.86	39.04	6.62	7.62	-10.65
Loans	16.09	20.93	26.97	2.20	-20.05	-9.18
Noncurrent Loans	-0.70	1.85	1.72	1.36	-0.35	-2.42
Other Real Estate Owned	0.38	0.49	0.40	1.56	1.04	0.02
Investment Securities	3.80	-0.95	4.39	8.08	5.78	8.81
Total Liabilities	12.67	22.62	36.70	5.65	6.12	-16.58
Deposits	11.70	21.56	12.63	21.10	5.36	-20.95
Loan Loss Reserve	11.96	-0.73	-0.51	-1.60	-0.44	-0.48
Equity Capital	-8.22	2.24	2.34	0.97	1.51	5.93
Total Capital	N/A	N/A	N/A	1.32	0.32	5.00

Banking Research and Statistics

Aggregate Performance Data For National Banks By Asset Size
(data through second quarter of each year)

	Under $300M		*$300M-$1B*		*$1B-$10B*		*Over $10B*		*Total*	
	1991	*1992*	*1991*	*1992*	*1991*	*1992*	*1991*	*1992*	*1991*	*1992*
Industry Structure										
Number of Banks	3,385	3,170	318	313	163	175	35	33	3,901	3,691
Number of Banks with Losses	480	247	27	17	30	12	8	1	545	277
Number of Failed/Assisted Banks	20	14	2	0	3	0	1	0	26	14
Income Statement ($ Billions)										
Year-To-Date										
Net Income	1.33	1.33	0.68	0.86	1.25	3.23	1.74	3.10	5.00	8.52
Net Interest Income	5.00	5.26	3.29	3.47	11.63	12.90	14.77	15.68	34.69	37.32
Noninterest Income	1.33	1.39	1.10	1.16	6.33	7.16	9.39	9.99	18.15	19.69
Noninterest Expense	4.41	4.45	2.93	2.97	11.90	13.06	16.98	17.58	36.21	38.06
Loan Loss Provision	0.54	0.42	0.55	0.49	4.20	2.73	4.61	4.36	9.90	7.99
Securities Gains, Net	0.04	0.09	0.02	0.05	0.18	0.37	0.23	0.58	0.48	1.09
Extraordinary Income, Net	0.33	0.02	0.00	-0.01	0.02	0.06	0.02	0.10	0.38	0.18
Net Loan Loss	0.45	0.35	0.50	0.41	3.35	2.71	5.52	3.85	9.82	7.31
Second Quarter										
Net Income	0.50	0.69	0.32	0.44	0.33	1.65	0.89	1.62	2.04	4.40
Net Interest Income	2.54	2.68	1.68	1.76	5.87	6.54	7.43	8.09	17.53	19.06
Noninterest Income	0.70	0.71	0.57	0.59	3.20	3.61	4.83	5.29	9.29	10.20
Noninterest Expense	2.24	2.25	1.49	1.49	6.07	6.61	8.61	9.23	18.41	19.58
Loan Loss Provision	0.30	0.21	0.32	0.23	2.36	1.28	2.37	2.02	5.35	3.74
Securities Gains, Net	0.02	0.04	0.01	0.03	0.09	0.15	0.10	0.14	0.21	0.36
Extraordinary Income, Net	0.01	0.01	0.00	-0.01	0.01	0.01	0.02	0.06	0.04	0.08
Net Loan Loss	0.25	0.19	0.28	0.20	1.76	1.30	3.41	1.83	5.70	3.52
Performance Ratios (%)										
Year-To-Date										
Return on Equity	12.81	12.65	11.53	14.13	6.68	15.14	6.72	11.43	8.21	13.10
Return on Assets	1.05	1.08	0.82	1.06	0.42	1.05	0.37	0.68	0.51	0.88
Net Interest Margin	3.96	4.25	3.97	4.31	3.89	4.19	3.12	3.42	3.53	3.84
Loss Provision to Loans	0.79	0.64	1.07	1.00	2.18	1.45	1.48	1.45	1.59	1.33
Net Loan Loss to Loans	0.66	0.53	0.97	0.84	1.74	1.44	1.77	1.28	1.58	1.21
Noncurrent Loans to Loans	2.16	2.05	2.27	2.12	3.92	3.27	5.52	5.01	4.39	3.91
Loss Reserve to Loans	1.83	1.86	1.86	2.11	2.91	3.12	2.80	2.95	2.65	2.82
Loss Reserve to Noncurrent Loans	84.56	90.39	81.92	99.69	74.19	95.58	50.68	58.88	60.32	72.04
Loans to Assets	53.99	53.00	61.65	60.52	64.49	61.09	65.83	63.36	63.54	61.11
Loans to Deposits	61.04	60.05	72.82	71.59	83.42	78.95	88.17	84.73	81.36	78.25
Equity Capital to Assets	8.27	8.68	7.21	7.79	6.41	7.24	5.57	6.12	6.31	6.93
Estimated Leverage Ratio	8.19	8.53	6.94	7.51	6.06	6.81	5.19	5.72	5.99	6.56
Estimated Risk-Based Capital Ratio	14.77	15.74	11.78	12.83	9.35	11.25	8.64	9.55	9.67	10.88

0.00 indicates an amount of less than $5 million.
Banking Research and Statistics

Aggregate Condition Data For National Banks By Asset Size
(data through second quarter of each year)

	Under $300M		*$300M-$1B*		*$1B-$10B*		*Over $10B*		*Total*	
	1991	*1992*	*1991*	*1992*	*1991*	*1992*	*1991*	*1992*	*1991*	*1992*
Balance Sheet ($ Billions)										
Assets	252.78	249 17	167 01	161 16	595 97	614.80	945 43	946 46	1,961 20	1,971 59
Loans	136 48	132 07	102 96	97 54	384 37	375 59	622 42	599 66	1,246 23	1,204 86
Real Estate (RE)	71 68	72 79	48 86	50 20	148 57	147.64	236 39	229.76	505 50	500 40
Commercial & Industrial (C&I)	26.88	24 25	21.96	19 14	101.27	91.76	216 79	203 19	366.90	338 34
Consumer (Cnsmr)	27 66	25.20	24 91	23 09	98.84	97 67	78 54	78 22	229.94	224 18
Noncurrent Loans	2.95	2 71	2.34	2 06	15 08	12.27	34 33	30 06	54 71	47 11
Noncurrent RE Loans	1 45	1 39	1.33	1 23	8.01	6.96	17.86	16.53	28 64	26 10
Noncurrent C&I Loans	1 25	1 10	0.73	0.55	4 81	3.31	11.62	9 24	18 41	14 20
Noncurrent Cnsmr Loans	0 24	0 20	0.20	0.19	1.55	1.40	1.28	1.44	3 26	3.23
Other Real Estate Owned	1.60	1 46	1.06	1 01	6.20	5.48	8.63	10.49	17.48	18.44
Investment Securities	77.73	82.45	37.77	40.72	107 74	137.68	105 63	120.46	328.87	381.31
Total Liabilities	231.89	227.54	154.98	148.60	557.79	570.28	892.80	888.49	1,837.46	1,834.92
Total Deposits	223 60	219.94	141.39	136.25	460.78	475.72	705 93	707.76	1,531 70	1,539 66
Domestic Deposits	223.44	219.82	141.11	135.99	451.95	468 35	525.97	522.13	1,342.47	1,346.28
Loan Loss Reserve	2.50	2 45	1.92	2.06	11.19	11.73	17.40	17.70	33.00	33.94
Equity Capital	20.89	21.63	12 04	12.55	38 18	44.52	52.63	57.97	123 75	136.67
Total Capital	22.70	23.24	13 29	13 64	43 19	49 55	72.72	77.31	151.91	163 73
Balance Sheet Changes ($ Billions)										
Year-To-Date Changes										
Assets	-1 28	-1 07	7.22	-2.93	-13.80	5 63	-14.83	-10.97	-22.69	-9.35
Loans	-1.89	0.18	2 58	-1.98	-8 16	-1.58	-21.81	-19.27	-29.28	-22 65
Noncurrent Loans	0 10	-0 04	0.19	-0.17	0.93	-0.48	1.70	-2.54	2.92	-3.23
Other Real Estate Owned	0.03	-0 09	0 08	-0.02	1 13	0.11	1.79	0.77	3.03	0.77
Investment Securities	5.16	2.75	4.86	2.28	4 14	14.61	1.90	1.64	16.06	21.29
Total Liabilities	-1 42	-1.87	6 43	-3.60	-15.65	1.30	-15.89	-14.97	-26.52	-19.14
Deposits	-1.28	-1.60	8.03	-2.76	-17.84	0.49	-12.81	-26.36	-23.90	-30.23
Loan Loss Reserve	0.09	0.04	0.04	0 02	0.62	0.81	-1.89	-0.67	-1.13	0.21
Equity Capital	0.13	0.80	0.79	0.67	1 85	4 32	1.06	4.00	3.83	9.80
Total Capital	0.09	0.73	1.04	0.64	0.85	4.41	0.85	3.12	2.83	8.90
Second Quarter Changes										
Assets	-1.98	-0.07	7 38	-4.18	-9.61	14.16	11.83	-20.56	7 62	-10.65
Loans	-1.93	1.96	2.67	-2.18	-12.83	7.24	-7.96	-16.19	-20.05	-9.18
Noncurrent Loans	-0 14	-0.12	0.07	-0.14	-0.31	-0.09	0.03	-2.07	-0.35	-2.42
Other Real Estate Owned	-0 02	-0.06	-0.04	-0.01	0 22	0.07	0.89	0.02	1.04	0.02
Investment Securities	1.89	1.05	2.37	0.14	2.62	10.74	-1.10	-3.12	5.78	8.81
Total Liabilities	-1.95	-0.53	6.89	-4.34	-9 62	10.98	10.79	-22.68	6.12	-16 58
Deposits	-2.12	-0.89	7.35	-3.88	-5 17	8.66	5.30	-24.85	5.36	-20 95
Loan Loss Reserve	-0.01	0.00	0.01	-0.01	0 43	0.77	-0.87	-1 25	-0.44	-0 48
Equity Capital	-0.03	0 47	0 49	0.16	0.01	3 18	1.03	2.12	1 51	5 93
Total Capital	-0.06	0 45	0.69	0.16	-0.50	3.36	0.20	1.02	0 32	5.00

0.00 indicates an amount of less than $5 million
Banking Research and Statics

Aggregate Performance Data For National Banks by Region
(data through second quarter of 1992)

	Northeastern	*Southeastern*	*Central*	*Midwestern*	*Southwestern*	*Western*	*Total*
Industry Structure							
Number of Banks	409	504	767	641	884	486	3,691
Number of Banks with Losses	43	59	25	17	59	74	277
Number of Failed/Assisted Banks	5	2	0	0	4	3	14
Income Statement ($ Billions)							
Year-To-Date							
Net Income	1.85	1.62	1.77	0.90	0.96	1.41	8.52
Net Interest Income	11.55	6.05	6.45	2.54	3.30	7.43	37.32
Noninterest Income	7.26	2.61	2.58	1.93	1.59	3.73	19.69
Noninterest Expense	13.21	5.68	5.72	2.80	3.47	7.18	38.06
Loan Loss Provision	3.58	0.86	0.97	0.44	0.36	1.78	7.99
Securities Gains, Net	0.54	0.18	0.13	0.06	0.13	0.04	1.09
Extraordinary Income, Net	0.15	0.00	0.00	0.00	0.03	0.00	0.18
Net Loan Loss	3.54	0.75	0.90	0.38	0.35	1.39	7.31
Second Quarter							
Net Income	0.98	0.89	0.96	0.45	0.47	0.66	4.40
Net Interest Income	5.90	3.13	3.26	1.29	1.67	3.82	19.06
Noninterest Income	3.68	1.40	1.33	0.94	0.85	2.00	10.20
Noninterest Expense	6.72	2.91	2.88	1.40	1.78	3.89	19.58
Loan Loss Provision	1.64	0.36	0.46	0.21	0.18	0.89	3.74
Securities Gains, Net	0.20	0.02	0.07	0.02	0.05	0.01	0.36
Extraordinary Income, Net	0.07	0.00	0.00	0.00	0.01	-0.01	0.08
Net Loan Loss	1.72	0.33	0.44	0.19	0.16	0.68	3.52
Performance Ratios (%)							
Year-To-Date							
Return on Equity	9.38	14.89	14.69	17.67	15.90	12.58	13.10
Return on Assets	0.56	1.04	1.06	1.40	1.07	0.87	0.88
Net Interest Margin	3.50	3.90	3.86	3.93	3.65	4.55	3.84
Loss Provision to Loans	1.75	0.92	0.96	1.17	0.84	1.46	1.33
Net Loan Loss to Loans	1.73	0.80	0.88	1.01	0.82	1.15	1.21
Noncurrent Loans to Loans	5.73	2.44	2.26	1.73	2.71	4.43	3.91
Loss Reserve to Loans	3.33	2.23	2.10	2.09	2.57	3.31	2.82
Loss Reserve to Noncurrent Loans	58.15	91.29	92.82	120.23	94.60	74.66	72.04
Loans to Assets	61.85	59.46	60.53	57.73	47.42	70.22	61.11
Loans to Deposits	81.13	76.95	78.72	74.61	55.21	88.07	78.25
Equity Capital to Assets	6.15	7.21	7.48	8.15	6.96	7.18	6.93
Estimated Leverage Ratio	5.95	6.72	7.27	7.74	6.65	6.41	6.56
Estimated Risk-Based Capital Ratio	10.22	11.44	11.13	13.18	12.88	10.03	10.88

0.00 indicates an amount of less than $5million.
Banking Research and Statistics

Aggregate Condition Data For National Banks By Region
(data through second quarter of 1992)

	Northeastern	*Southeastern*	*Central*	*Midwestern*	*Southwestern*	*Western*	*Total*
Balance Sheet ($ Billions)							
Assets	663.74	313.80	336.37	129.30	182.08	346.30	1,971.59
Loans	410.53	186.60	203.59	74.64	86.33	243.17	1,204.86
Real Estate (RE)	156.64	93.02	76.47	27.43	34.60	112.25	500.40
Commercial & Industrial (C&I)	128.16	42.82	63.57	18.27	25.50	60.02	338.34
Consumer (Cnsmr)	69.43	34.73	41.42	16.71	15.92	45.97	224.18
Noncurrent Loans	23.53	4.56	4.61	1.29	2.34	10.78	47.11
Noncurrent RE Loans	13.42	2.95	1.98	0.44	1.06	6.25	26.10
Noncurrent C&I Loans	6.38	1.21	1.88	0.44	0.92	3.37	14.20
Noncurrent Cnsmr Loans	1.62	0.23	0.39	0.34	0.10	0.54	3.23
Other Real Estate Owned	8.95	2.43	1.78	0.43	1.52	3.33	18.44
Investment Securities	109.85	72.25	66.03	33.98	57.40	41.80	381.31
Total Liabilities	622.93	291.17	311.20	118.77	169.40	321.45	1,834.92
Total Deposits	506.00	242.49	258.64	100.05	156.38	276.11	1,539.66
Domestic Deposits	361.45	236.83	238.98	99.73	155.18	254.10	1,346.28
Loan Loss Reserve	13.68	4.16	4.28	1.56	2.21	8.05	33.94
Equity Capital	40.80	22.63	25.17	10.54	12.68	24.85	136.67
Total Capital	54.94	25.15	29.41	11.63	13.88	28.72	163.73
Balance Sheet Changes ($ Billions)							
Year-To-Date Changes							
Assets	0.77	1.44	-1.30	5.12	1.23	-16.60	-9.35
Loans	1.26	1.60	-9.00	-2.85	1.55	-15.21	-22.65
Noncurrent Loans	-0.31	-0.08	2.05	-0.44	-0.23	-0.11	-3.23
Other Real Estate Owned	0.07	-0.05	1.05	-0.08	-0.30	0.08	0.77
Investment Securities	1.80	1.62	5.25	7.12	2.51	3.00	21.29
Total Liabilities	1.01	0.59	3.55	3.40	0.19	-18.76	-19.14
Deposits	-2.49	-0.80	-11.01	-2.67	-0.45	-12.82	-30.23
Loan Loss Reserve	0.12	0.08	0.06	0.08	-0.04	-0.09	0.21
Equity Capital	1.77	0.85	2.25	1.71	1.05	2.16	9.80
Total Capital	1.90	0.99	2.97	2.12	1.00	-0.08	8.90
Second Quarter Changes							
Assets	0.25	-5.51	7.47	-2.28	0.08	-10.66	-10.65
Loans	-3.82	1.94	1.91	0.60	2.61	-8.54	-9.18
Noncurrent Loans	-0.98	-0.41	-0.17	-0.09	-0.20)	-0.58	-2.42
Other Real Estate Owned	0.40	-0.10	0.00	-0.04	-0.17	-0.08	0.02
Investment Securities	3.40	3.96	1.12	-1.19	0.68	0.85	8.81
Total Liabilities	-0.84	-6.59	6.33	-2.62	-0.54	-12.32	-16.58
Deposits	-6.88	-3.32	-0.01	-1.43	0.07	-9.40	-20.95
Loan Loss Reserve	-0.05	-0.02	0.05	0.03	-0.04	-0.46	-0.48
Equity Capital	1.09	1.08	1.14	0.35	0.62	1.66	5.93
Total Capital	1.62	1.54	1.27	0.46	0.56	-0.44	5.00

0.00 indicates an amount of less than $5 million
Banking Research and Statistics

Glossary

Definitions

Commercial Real Estate Loans: Loans secured by nonfarm nonresidential properties.

Construction Loans: Loans for construction and land development.

Extraordinary Income: Net income from events and transactions that are "unusual and infrequent."

Failed/Assisted Banks: National banks that have been closed by, or have received financial assistance from, the Federal Deposit Insurance Corporation (FDIC).

Investment Securities: Total securities excluding those held in trading accounts.

Leverage Ratio: Ratio of estimated Tier 1 capital to estimated tangible total assets

Loans: Total loans and leases less unearned income.

Net Loan Losses: Total loans and leases charged off (removed from balance sheet because of uncollectibility) during the period, less amounts recovered on loans and leases previously charged off.

Loan Loss Reserve: The allowance for loan and lease losses.

National Banks: Nationally chartered commercial banks in the U.S. and its territories that are insured by either the Bank Insurance Fund or the Savings Association Insurance Fund of the FDIC and filed a call report.

Noncurrent Loans: The sum of loans and leases 90 days or more past due plus nonaccrual loans.

Net Interest Margin: Net interest income as a percent of average assets.

Regions: Northeast (NE) — Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands; Southeast (SE) — Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia; Central (CE) — Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin; Midwest (MW) — Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; Southwest (SW) — Arkansas, Louisiana, New Mexico, Oklahoma, Texas; West (WE) — Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming. Each bank in a multinational bank holding company is included in the region in which the bank is located.

Other Real Estate Owned (OREO): Real estate acquired by a bank for debts previously contracted (i.e., foreclosed real estate). Also includes property formerly used or intended for use for banking purposes.

Residential Real Estate: Loans secured by one- to four-family residential properties plus loans secured by multifamily (five or more) residential properties.

Risk-based Capital Ratio: Ratio of estimated total capital to estimated risk-weighted assets in percent.

Securities Gains: Net of realized gains and losses on securities not held in trading account.

Total Capital: Total risk-based capital is the sum of Tier 1 and Tier 2 as reported on call report schedule RC-R

Computation Methodology

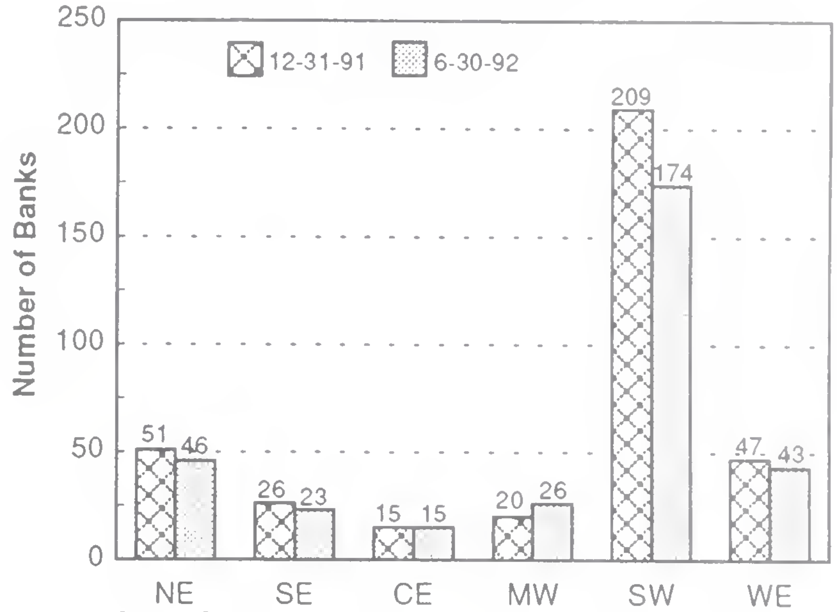
Current quarter income statement items were calculated by summing the difference between the year-to-date and previous quarter numbers of each item for all banks that filed a current quarter call report. For performance ratios constructed by dividing an income statement (flow) item by a balance sheet (stock) item, the income statement item for the period was annualized (multiplied by the number of periods in a year) and the average of the balance sheet item for the period (beginning-of-period amount plus end-of-period amount divided by two) was used

Special Supervision and Enforcement Activities

Problem National Banks

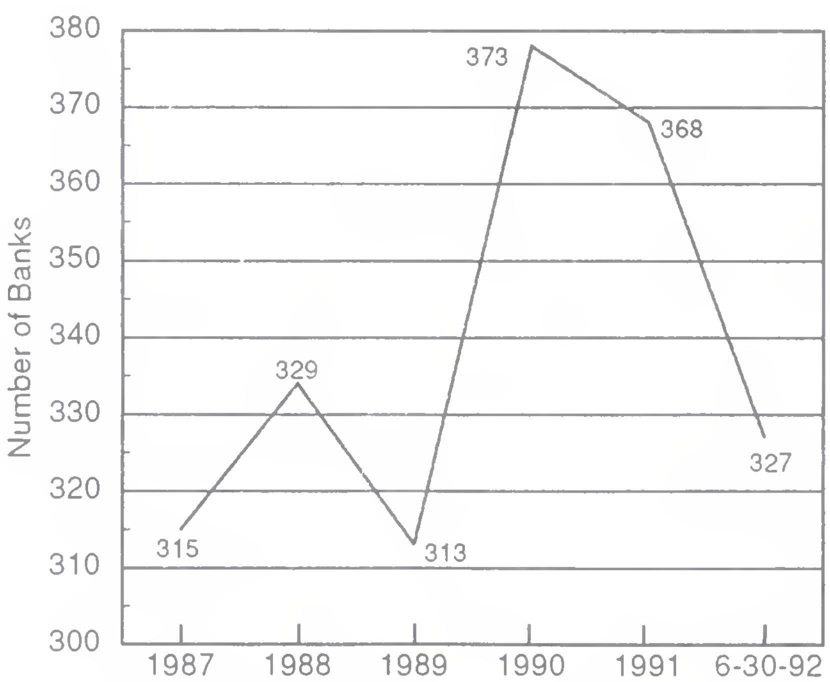
After reaching a high of 373 at the end of 1990, the number of problem national banks declined in 1991 to 368 and to 327 as of June 30, 1992. As has been the case for the last several years, most problem banks are still located in the Southwestern District. However, the number of problem banks in this district declined by 17 percent from year-end 1991 levels. The improvement in the condition of national banks in the Southwestern District is due to several factors, including a slowdown in reserving for problem loans, especially in commercial real estate portfolios. Declining interest rates have also improved profitability. Outside investors have also shown interest in investing in the national banks in this region. In the other districts, except for the Central and Midwestern districts, the numbers of problem banks also declined from 1991.

Number of Problem Banks By District



Source: Special Supervision

Number of Problem National Banks

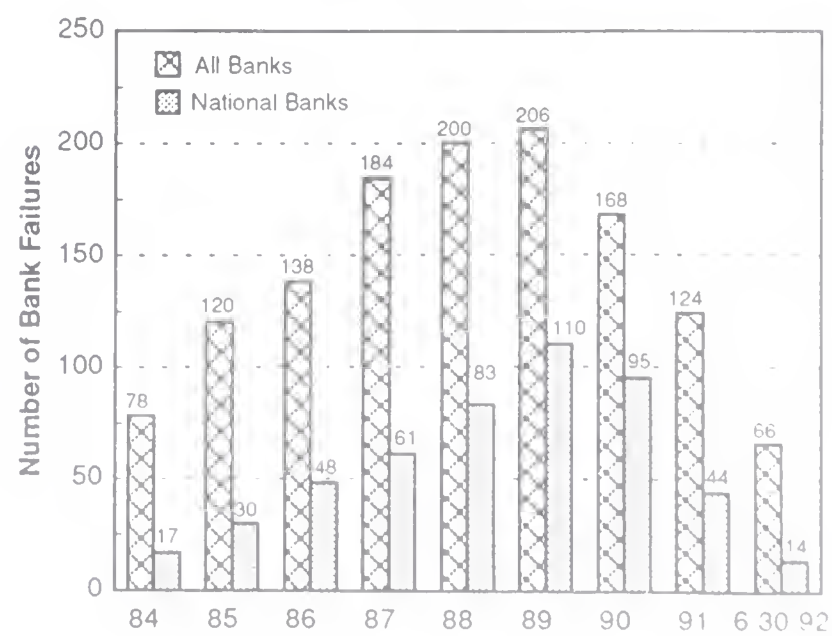


Source: Special Supervision

National Bank Failures

Sixty-six commercial banks failed during the first half of 1992, of which 14, or 21 percent were national banks. As occurred in 1990 and 1991, the greatest number of national bank failures took place in banks with less than $25 million in total assets. In 1991, 124 commercial banks failed, 44 of which were national banks. This represents the lowest number of national bank failures since 1985; however, a record number of large national banks with more than $1 billion in total assets failed in 1991.

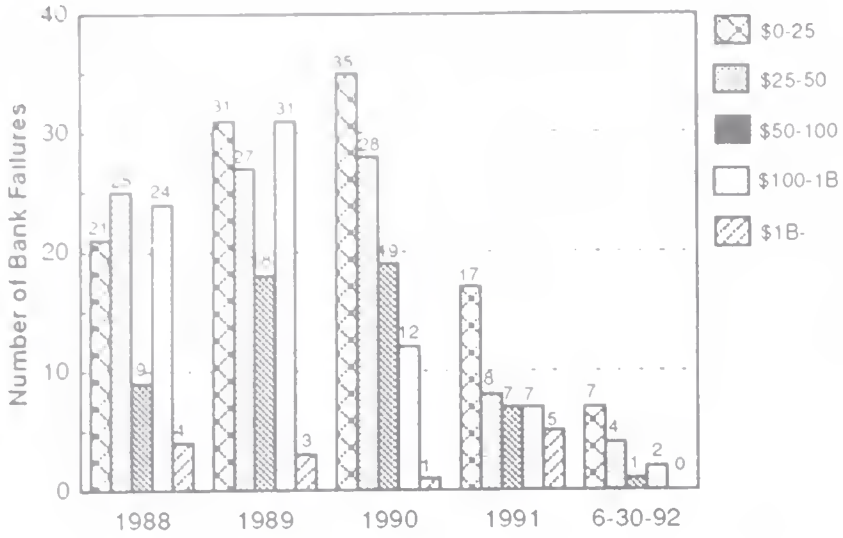
Bank Failures



Source: Special Supervision

This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures are provided by the OCC's Special Supervision Division in Washington. Information on enforcement actions is provided by Special Supervision together with the Enforcement and Compliance Division of the Law Department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

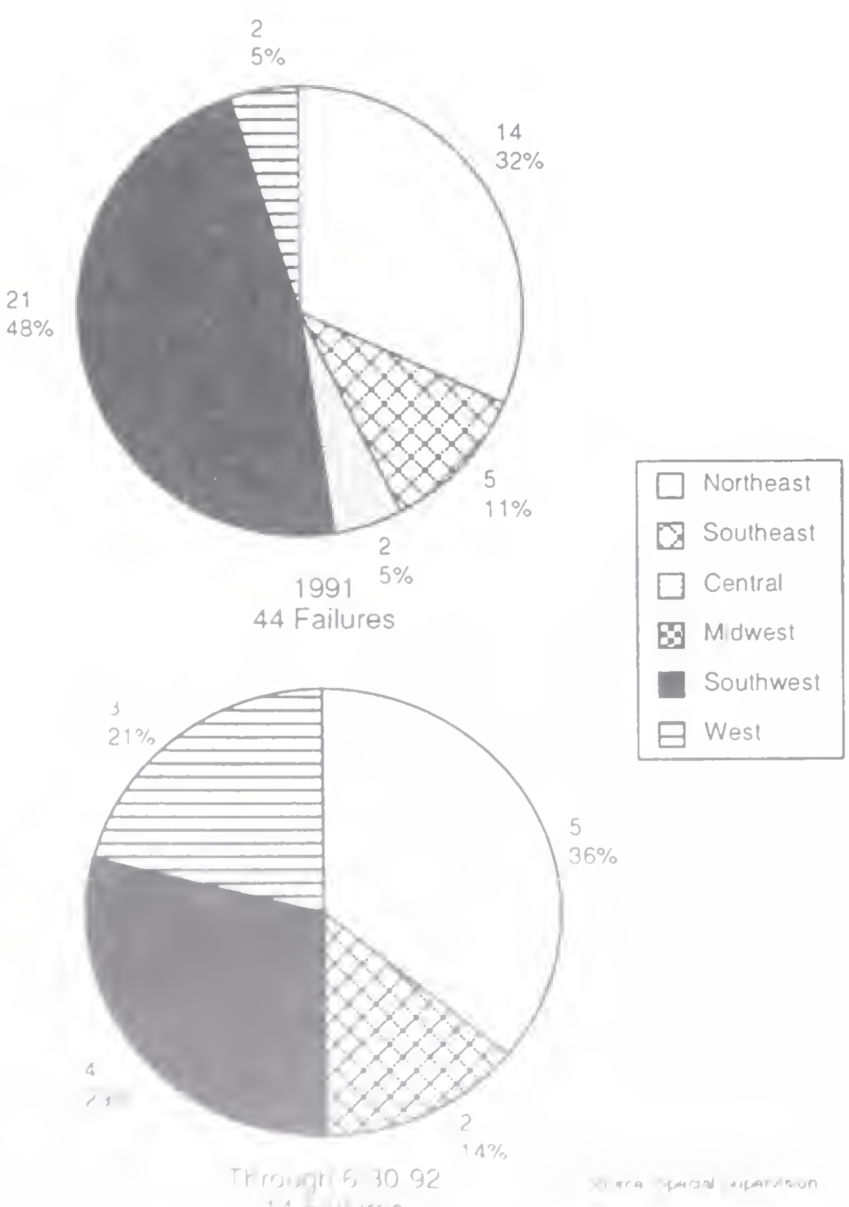
Failed National Banks By Asset Size



Source Special Supervision

National bank failures thus far in 1992 have occurred in four of the OCC's districts: the Northeastern, Southeastern, Southwestern, and Western districts. In the 1980s the majority of national bank failures were in the Southwestern District, but this trend appears to be waning as the country's economic downturn has moved to the other five districts.

National Bank Failures by OCC District



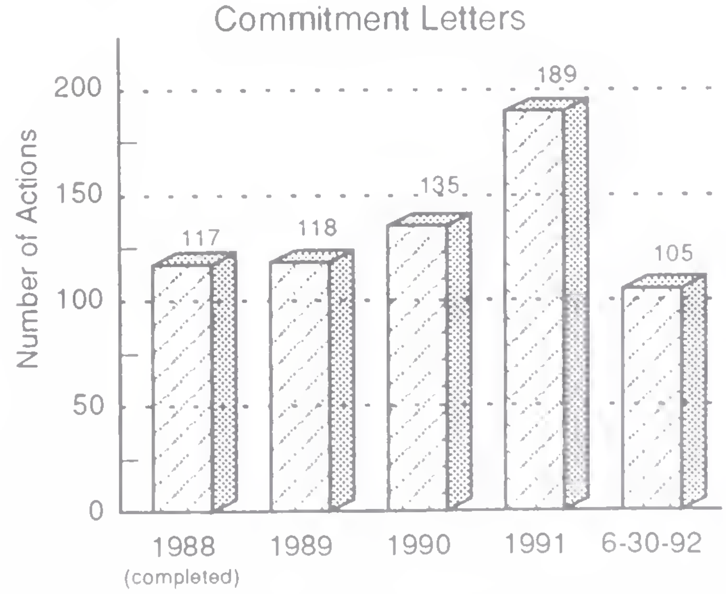
Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety or soundness or compliance problems, these remedies range from informal advice and moral suasion to formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

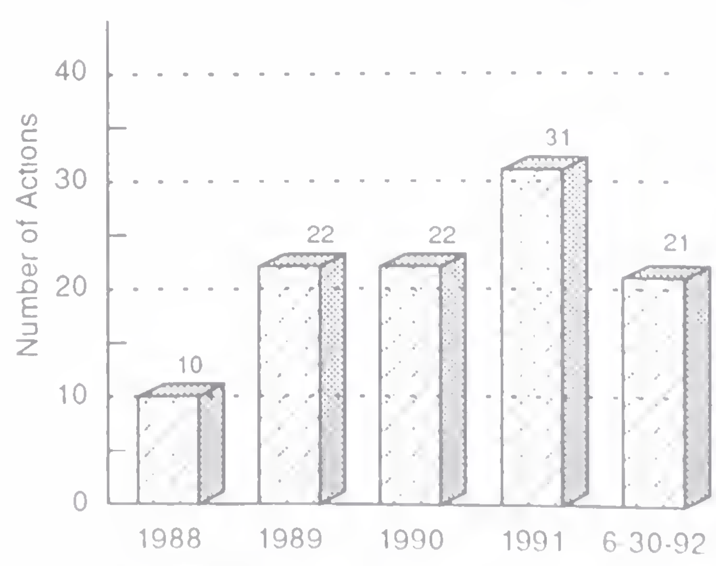
As of June 30, 1992, the OCC had 1,330 enforcement actions outstanding against approximately 3,700 national banks. These enforcement action include orders to cease and desist, formal agreements, memoranda of understanding, commitment letters, board resolutions, application approval conditions, capital directives, conservatorships, securities enforcements, and trust power revocations.

The OCC's informal enforcement actions include commitment letters and memoranda of understanding (MOUs). Informal actions are meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. While they are not legally enforceable, failure to honor informal actions will provide strong evidence of the need for the OCC to take formal action.

Commitment Letters

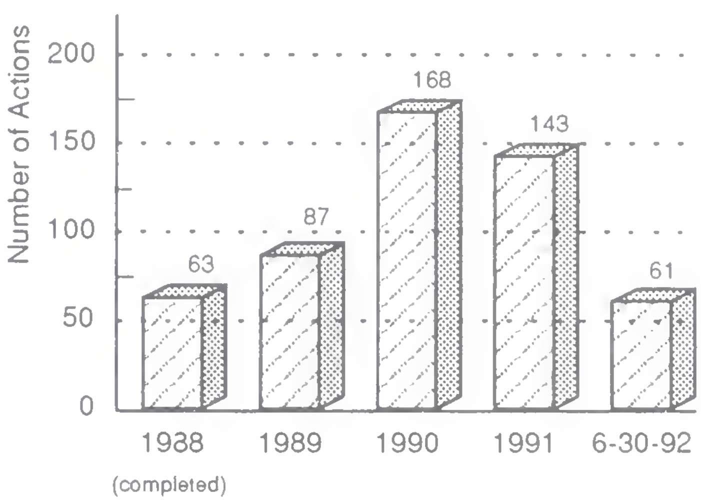


Memorandums of Understanding

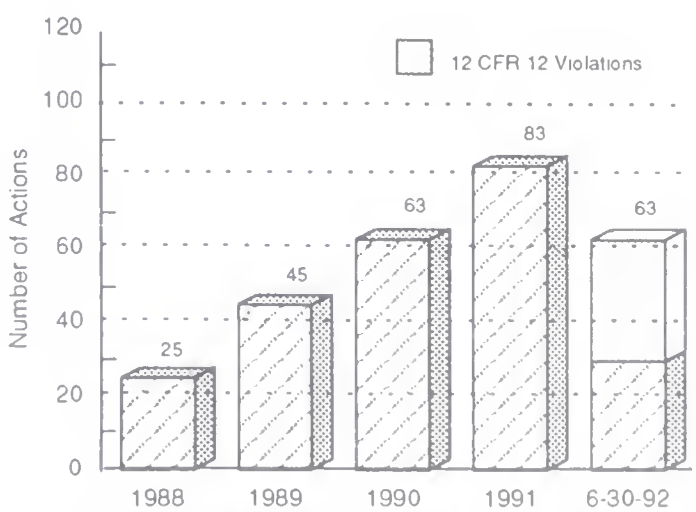


The most common types of formal actions issued by the OCC over the past several years have been formal agreements, cease and desist orders, civil money penalties (CMPs), and removals. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are specified as necessary to return the bank to a safe and sound condition. Cease and desist orders, identical in form and legal effect to consent orders, may be legally enforced. Like formal agreements, these orders contain a series of specified remedial measures in article form. CMPs are authorized for violations of laws, rules, regulations, formal written agreements, final orders, conditions imposed in writing, and, under certain circumstances, unsafe or unsound banking practices or breaches of fiduciary duty. Finally, the OCC occasionally is compelled to use removal orders to remove individuals from the banking industry who have violated the law or acted in an unsafe or unsound manner.

Formal Agreements

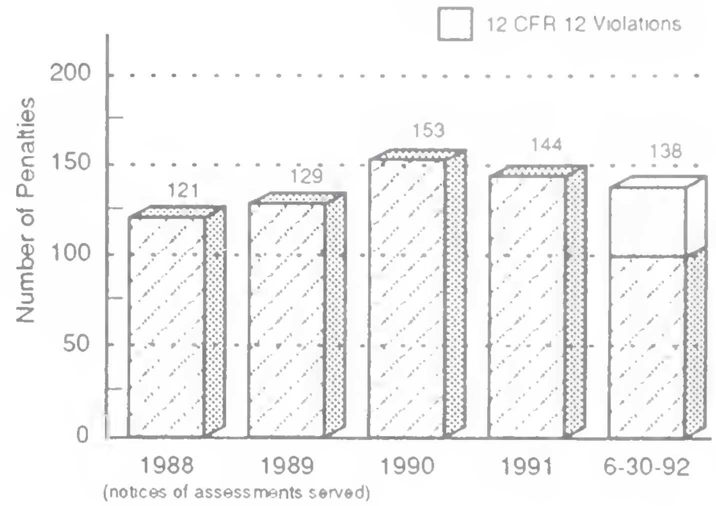


Orders to Cease and Desist

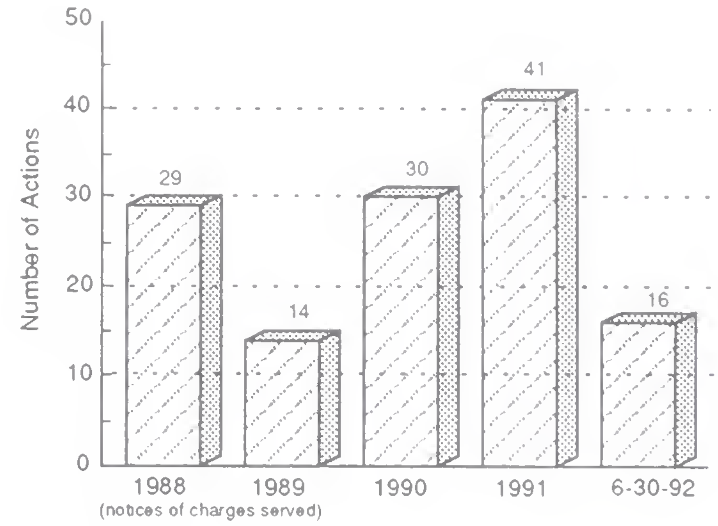


*Thirty-three of the cease and desist orders and civil money penalties settled in the period January 1 - June 30, 1992 involved orders issued pursuant to 12 CFR 12 relating to violations of the recordkeeping requirements of government securities dealers. They are described in the recent enforcement cases section of this article.

Civil Money Penalties



Orders of Removal



Recent Enforcement Cases

On January 16, 1992, the OCC settled actions against 33 national bank government securities brokers and dealers that had participated as selling group members in certain primary distributions of government debt securities. The enforcement actions were based on the failure of the banks to maintain accurate records concerning customers' orders for the government securities and/or offers, purchases, or sales by the banks. The OCC issued orders directing the banks to cease and desist from the recordkeeping violations and to develop and implement policies and procedures to prevent their reoccurrence. All banks involved in this proceeding consented to the orders. CMPs ranging from \$5,000 to \$100,000 also were assessed, the CMP amounts were based on the sale concessions received by the banks. The OCC actions were coordinated with the Securities and Exchange Commission and the Federal Reserve Board, who independently adopted comparable settlements with an additional 65 broker/dealers under their respective authority.

The OCC instituted an administrative enforcement action against Citibank, N.A., New York, New York, to address willful violations of the Securities Exchange Act

of 1934 and the Securities and Exchange Commission transfer agent rules. As the appropriate regulatory agency for national bank transfer agents, the OCC determined that the bank, as transfer agent for more than 2,200 debt securities issues, failed reasonably to safeguard approximately 3,500 boxes of canceled securities certificates with a face value of approximately $111 billion when it transmitted these securities to a third party vendor for destruction. The OCC also found the bank failed to provide required reports of potential thefts or losses of these securities to regulatory authorities. On June 24, 1992, without admitting or denying the findings of the OCC, Citibank consented to the censure and the requirement to comply with a number of remedial measures. Among other things, the order requires the bank to assure compliance with the transfer agent rules, retain an independent outside accountant, and maintain a compliance and internal audit program.

On May 19, 1992, the OCC reached a settlement agreement on a CMP and permanent prohibition action against John C. Riddle, former director of Texas National Bank-Post Oak, Houston, Texas. These actions were based on an alleged extension of credit to a third party which directly benefitted the former director, in violation of 12 U.S.C. 84. Mr. Riddle consented to both a permanent prohibition and a CMP in the amount of $25,000. Mr. Riddle neither admitted nor denied any wrongdoing by settling the action.

The OCC initiated a CMP and prohibition action against Wallace Eugene Garrison, former chairman of the board of First Community Bank of Alice, Alice, Texas, and Jimmy E. Nix, former controlling shareholder of First Community Bankshares, the bank's holding company. In the notices, the OCC alleged that Mr. Garrison approved loans of approximately $2.5 million, or five times the bank's lending limit. The proceeds of the loans were attributable to Mr. Nix. Mr. Nix was determined to be a controlling shareholder of the bank because he was a voting representative of a voting trust controlling 68 percent of the stock of First Community Bankshares. Mr. Garrison agreed to a permanent prohibition and a CMP of $17,500. Mr. Nix also agreed to a permanent prohibition and a CMP of $1,958,157. This amount may be reduced by the amount of principal Mr. Nix repays the bank on the loans over the next two years, but may not be reduced below $25,000.

The OCC entered into a consent order with Triad Bank, N.A., Tulsa, Oklahoma, on February 25, 1992. Among other things, the order requires the bank to augment its capital base, monitor and report properly the bank's concentration in purchased mortgage servicing rights, and correct violations of law.

An administrative hearing was held June 15-19, 1992, in St. Louis, Missouri, concerning a CMP action against John R. Givens, former president and director of U.S. National Bank of Clayton, St. Louis, Missouri. The OCC alleged that Mr. Givens and O. Bruce Mills, the bank's chairman, violated 12 U.S.C. 371c by extending credit to a limited partnership whose general partner was the bank's chairman and largest shareholder. A violation of 12 U.S.C. 375b also was alleged concerning one of the partnership loans because of its unfavorable features. Mr. Mills agreed to pay a penalty of $5,000. The OCC is awaiting a decision from the administrative law judge in the action against Mr. Givens.

The OCC reached CMP settlements with several officers and directors of the First National Bank of Stamford, Stamford, Connecticut. The OCC alleged that directors J. Ralph Murray, Joseph Maida, and Ronald King violated 12 U.S.C. 375a and 12 CFR 215.4(d) through the payment of overdrafts on accounts held by the directors at the bank. The OCC based its actions against the bank's president, Norman H. Reader, and its vice-president, Paul H. Reader, on alleged violations of 12 U.S.C. 375a which resulted in loans in excess of the aggregate limits for extensions of credit to executive officers.

The OCC filed a notice of assessment and notice of intention to prohibit further participation in banking against James A. Szesny, former loan officer at First National Bank of Chicago Heights, Chicago Heights, Illinois. The notices alleged that Mr. Szesny engaged in reckless unsafe and unsound banking practices while he was employed at the bank. Without admitting or denying any wrongdoing, Mr. Szesny agreed to a permanent prohibition and a $5,000 CMP.

On March 15, 1992, Robert L. Rice, IV, the former chairman of the board of the National Bank of Conroe, Conroe, Texas, consented to a prohibition from banking and a $25,000 CMP. The OCC alleged that Mr. Rice violated the Change in Bank Control Act by orchestrating the acquisition of the bank on behalf of persons whose identities were not disclosed.

On July 1, 1992, the OCC settled enforcement actions against several officers, directors, and a person deemed to have participated in the affairs of the First National Bank of Georgetown, Georgetown, Illinois. Frank Cornwell, Terry Stahl, Jack Morrison, John Maudlin, Elvis Black, Dixie Neubert, and Kenneth Schecter consented to CMPs aggregating $30,500 based upon alleged violations of 12 U.S.C. 60(b), 161, 371c, 371c-1 and 12 CFR 21.11 and 12 CFR 215. Mr. Pribble consented to a prohibition and agreed to reimburse the bank $20,345 in connection with the alleged violations

The OCC settled two actions against officers of the defunct National Bank of Washington, Washington, D.C. W. Thomas Fleming, the former president of the bank, agreed to pay a $10,000 CMP to settle an action in which the OCC alleged that the bank had exceeded the established limits on extensions of credit to an affiliate, the Washington Mortgage Group. Thelma Elizabeth Pollard, an officer in the bank's Treasury Services Division, consented to a $1,000 CMP and a two year ban from banking. Ms. Pollard also consented to a permanent ban from the sale of securities, trust department decision making, and management positions. The OCC alleged that Ms. Pollard transferred customer funds, without consent, from certificates of deposit and other customer instruments, into commercial paper issued by Washington Bancorporation. Washington Bancorporation defaulted on its commercial paper on May 7, 1990.

Kathleen L. Lampi, former director of the National Bank of the Redwoods, Santa Rosa, California, agreed on February 18, 1992, to a prohibition from banking. The OCC had alleged that Ms. Lampi engaged in a check kiting scheme by taking advantage of a one day float granted to certain electronic banking customers of the bank. At one point, the scheme resulted in the bank's exposure exceeding $400,000.

The Comptroller issued a final C&D on May 6, 1992, against the Lakeside National Bank of Lake Charles, Lake Charles, Louisiana. An administrative law judge who presided over an administrative hearing held in May, 1991 recommended this action. The comprehensive C&D covered most areas of the bank's operations including loan administration, the allowance for loan and lease losses, funds management, and capital. In addition, the C&D requires the bank to obtain OCC approval before entering into management contracts

On June 25, 1992, the OCC appointed a conservator for the First National Bank & Trust Company, Wibaux, Montana. The OCC took this action because the bank had been in continual noncompliance with a C&D it had consented to in 1986 and because the bank had engaged in violations of law and unsafe and unsound practices. The OCC appointed a conservator because it believed the violations were likely to weaken the bank's condition and seriously prejudice the interests of its depositors.

The OCC initiated a series of enforcement actions seeking millions of dollars in fines, restitution, and prohibitions from banking against certain officers, directors, and other "institution affiliated parties" of the Penta Group of banks in Connecticut. The Penta Group consisted of a loosely affiliated group of banks and one savings and loan association established by Richard D. Barbarian, who was president and chief executive officer of Security Savings and Loan Association, Waterbury, Connecticut. The national banks in the Penta Group were: Enfield National Bank, Enfield, Connecticut; Liberty National Bank, Danbury, Connecticut; and Summit National Bank, Torrington, Connecticut. The OCC based its actions on allegations of violations of law, unsafe and unsound practices, and breaches of fiduciary duty stemming from a pattern of criss-crossing loans made to various Penta Group insiders. The actions are scheduled for administrative hearings in 1993.

Recent Corporate Decisions

On May 5, 1992, the Office of the Comptroller of the Currency (OCC) denied a bank's application to perform a quasi-reorganization. The OCC denied the proposal because it did not meet all of the regulatory requirements specified in Banking Circular 236 and because the quasi-reorganization would cause the bank to be inadequately capitalized. The OCC also denied the application because the bank had not effectuated an anticipated and acceptable change in ownership and management prior to submitting the application.

On May 7, 1992, the OCC approved a request from World Trade Bank, National Association, Beverly Hills, California, to perform a reverse stock split. Unlike some previous reverse stock split proposals, this application was prompted by the bank's desire to realign portions of its capital, not to "freeze out" minority shareholders and force them to relinquish their interests in the bank.

On May 14, 1992, the OCC conditionally approved an application filed by FirsTier Bank, National Association, Omaha, Nebraska, to acquire Wyoming Trust & Management Company. The bank proposed to acquire an affiliated out-of-state, state-chartered trust company. Wyoming Trust would be organized as an operating subsidiary of the bank and would continue to conduct fiduciary operations in Wyoming. The OCC approved the application on the grounds that fiduciary services conducted by the trust company did not constitute "core banking" and were therefore not subject to the McFadden Act's branching restrictions. The conditional approval required FirsTier to comply with all applicable laws pertaining to the acquisition of a trust company, including affiliate transaction limitations contained in 12 USC 371c.

On May 1, 1992, the OCC conditionally approved an application filed by First Bank, National Association, Minneapolis, Minnesota, to establish a national trust company in San Francisco, California, (First Trust of California, National Association). The trust company would be held as an operating subsidiary of First Bank. Among other things, the OCC's conditional approval stipulated that ownership of the trust company could not be changed without the OCC's prior approval.

This section summarizes selected corporate decisions completed during the second quarter of 1992. The cases are noteworthy because they represent issues of importance or unusual methods of accomplishing a particular expansion activity. Copies of the public sections of the applications may be obtained from the Communications Division of the OCC in Washington, D.C.

On May 14, 1992, the OCC denied a request to reconsider its previous revocation of a preliminary approval to charter a new bank. Although the OCC preliminarily approved the bank charter application on February 27, 1991, it subsequently denied the organizers' request to reduce the proposed capital of the bank from $7 to $5 million and to extend the stock offering period for a third time. The OCC's denials were based on the fact that the organizers had been unable to raise the initial $7 million, thereby failing to meet the basic market test for de novo banks, i.e., a showing of community and investor support of a proposed new bank.

On May 21, 1992, the OCC granted preliminary approval to Radio Shack to establish a limited purpose credit card bank. Tandy National Bank will be located in Gray, Tennessee.

In May, 1992, the OCC denied a bank's request for emergency processing of its application to acquire a troubled bank in Texas. The applicant argued that the target bank was in danger of insolvency and could lose its federal deposit insurance. The OCC, however, concluded that the target bank was not a near-term failure candidate and that the FDIC would not cancel the target bank's deposit insurance as long as a viable merger application was pending. Thus, while the target bank's financial condition was poor, the OCC ruled that the requirements for expeditious action set forth in 12 U.S.C. 1828(c)(6) had not been met.

Corporate Decision Related to the Community Reinvestment Act

On April 1, 1992, the OCC conditionally approved a branch relocation application for Pacific National Bank, Newport Beach, California. The OCC had found the bank's CRA performance less than satisfactory in ascertaining community credit needs, in marketing, and in lending within the bank's delineated community. The conditional approval required the bank to develop a written plan to improve its performance and to submit a CRA self-assessment and accomplishment report to the OCC. Final approval of the relocation will not be

The section related to CRA is provided pursuant to Banking Circular 238 dated June 15, 1989. It contains summaries to provide easier access to OCC's decisions on national bank corporate applications that have been conditionally approved or denied on grounds related to CRA. The decision letters are published monthly in the OCC's Interpretations *series. Decision letters for all CRA related decisions are available to the public upon request from the Communications Division.*

granted until the OCC has substantiated the bank's performance by an examination

On May 11, 1992, the OCC denied an application from Credit International Bank, N. A. (CIB), Washington, D.C., to purchase the assets and assume the liabilities of the Pennsylvania Avenue branch of Second National Federal Savings Bank, Washington, D.C. The OCC denied the application because the bank had failed to comply with conditions imposed by the OCC on March 12, 1992, relating to CIB's application to acquire Federal City National Bank, Washington, D.C.*

On April 22, 1992, the OCC granted Grand National Bank, Santa Ana, California, conditional approval to establish a branch office. The OCC's assessment of the bank's performance under CRA identified the following deficiencies: determining the credit needs of the entire delineated community; lending within the delineated community; and assuring adequate supervision and involvement by the board of directors. In addition, the OCC found that the bank's board of directors failed to:

- systematically or regularly review whether the bank's lending services met identified community credit needs;

- ensure fair and nondiscriminatory treatment of potential borrowers; and,

- assure that the banks marketing programs were directed to all segments of the community.

The conditional approval required the bank to develop a CRA plan, perform a self-assessment of performance, and submit an accomplishment report to the OCC. The OCC withheld final approval of the opening of the branch office until improvement in the bank's CRA performance has been substantiated by an OCC examination.

On June 19, 1992, the OCC conditionally approved an application from The Lake Crystal National Bank, Lake Crystal, Minnesota, to relocate a branch office. The OCC assessed the bank's CRA performance as less than satisfactory in ascertaining community credit needs, in its marketing and types of credit offered, and in bank management's awareness of community development programs within the delineated community. The conditional approval required the bank to submit a CRA plan and self-assessment of performance to the OCC. Moreover, the office cannot be relocated until the bank demonstrates satisfactory performance under the CRA.

Ballard C. Gilmore
Corporate Activity Division

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*For a discussion of the CRA conditions imposed on CIB in its application to acquire Federal City Bank, see volume 11, number 2, page 12 of the Quarterly Journal

Litigation Update

On December 20, 1991, the Court of Appeals for the District of Columbia Circuit held that the Office of the Comptroller of the Currency (OCC) had exclusive jurisdiction over national bank branch relocations. Thus the court ruled that the interstate branching restrictions in the Bank Holding Company Act did not grant the Federal Reserve Board jurisdiction over interstate relocations of the main offices of national banks.[1]

On June 26, 1992, the D.C. Circuit held that OCC bank examination reports are protected by a qualified privilege, thereby reversing and remanding a portion of an earlier decision that required the OCC to produce the bank examinations on the grounds that they had previously been provided to a bank. The D.C. Circuit held that the OCC is protected from releasing examination information unless the party seeking it can show compelling reasons for its disclosure. The circuit court also held that each assertion of privilege requires the district court to undertake a fresh evaluation of the competing interests at issue. The court indicated that district courts should consider, among other things, the relevance of the evidence sought; the availability of other evidence; the seriousness of the litigation; the government's role in the litigation; and the effect of disclosure upon future OCC actions.[2]

On February 7, 1992, in *Independent Ins. Agents of America v. Clarke*,[3] the D.C. Circuit reversed a district court decision upholding the OCC's position that a national bank, or a branch thereof, located in a town of fewer than 5,000 inhabitants could sell insurance to customers outside that community. The circuit court held that the OCC's position that national banks had the authority to act as agents for the sale of insurance under 12 U.S.C. 92 had no standing because Congress had repealed section 92 in 1918.

On June 15, 1992, the Court of Appeals for the Second Circuit, in *American Land Title Ass'n v. Clarke*,[4] took issue with the D.C. Circuit's conclusion regarding the repeal of section 92. The Second Circuit ruled that it saw no indication that Congress actually intended to repeal section 92 in 1918. After ruling that section 92 had not been repealed, however, the court went on to reverse a district court decision that had upheld the Comptroller's decision that a national bank in New York City could act as an agent for the sale of title insurance through an operating subsidiary. The Court of Appeals ruled that section 92 only permitted national banks to sell insurance in towns of less than 5,000 people. The court also declined to rule on the OCC's argument that 12 U.S.C. 24(7) allowed insurance sales as an incidental banking power. The court opined that even if the power to sell insurance constituted an incidental power, section 92 still prohibited banks to act as insurance agents in towns with more than 5,000 residents.

On February 14, 1992, the Seventh Circuit upheld the OCC's interpretation of 12 CFR 206.17(6), which governs cash and in kind distributions from common trust funds.[5] In this case, the OCC had denied permission to First National Bank of Chicago, as trustee of a real estate investment fund, to distribute individual properties owned by the fund to withdrawing investors. The court agreed with the OCC that, if in kind distributions were made in lieu of cash, or partially in cash and partially in kind, the trustee must give investors proportional interests in the fund's entire investment portfolio rather than individual properties owned by the real estate investment fund.

On February 19, 1992, the Eighth Circuit upheld the OCC's determination that First National Bank of Council Bluffs, Council Bluffs, Iowa, had violated the Truth in Lending Act's (TILA) annual percentage rate (APR) disclosure requirements. The OCC argued that the violation occurred because the bank had failed to disclose the composite interest rate on its discounted variable interest rate consumer installment loans. The court also upheld the OCC's position that the violations were neither "technical" nor "nonsubstantive"; hence the TILA required the bank to reimburse affected borrowers. The court, however, disagreed with the OCC's position that reimbursements should cover the period from the time an examination first uncovered the violations back to the last time the OCC conducted a consumer examination of the bank. Instead, the court held that the TILA limits adjustments to loans made since the examination "immediately preceding" the one in which the violations are detected. The court remanded the case to the OCC to consider whether to order re-

[1] *Synovus Financial Corp v. Board of Governors of the Federal Reserve System*, 952 F.2d 426 (D.C. Cir. 1991).
[2] *In re: Subpoena Served Upon the Comptroller of the Currency*, No 91-5427, slip op. (D.C. Cir. June 26, 1992)
[3] 955 F.2d 731 (D.C. Cir 1992)
[4] No 91-6235, slip op. (2nd Cir June 15, 1992).

[5] *First Nat'l Bank of Chicago v. Comptroller of the Currency*, 956 F.2d 1360 (7th Cir 1992)

imbursement to borrowers of loans made between the time of these two bank examinations and, if so ordered, to explain the reasons for doing so.[6]

On April 28, 1992 the U.S. Claims Court granted the defendant's motion to dismiss a claim against the U.S.[7] The plaintiff holding company filed suit claiming that the OCC's closure of Golden Pacific Bank violated the Fifth Amendment to the U.S. Constitution, which prohibits taking private property for public use without just compensation. The court disagreed. It denied the plaintiff's claim for compensation because the OCC's declaration of insolvency promoted the public interest in a sound banking system; the plaintiffs had been aware of the highly regulated nature of banking before choosing to invest in Golden Pacific Bank; and the impact of the OCC's insolvency declaration was slight since it preserved the bank's integrity that had been weakened by management's unsafe and unsound banking practices.

[6] *First Nat'l Bank of Council Bluffs, Iowa v. OCC*, 956 F.2d 1456 (8th Cir. 1992).
[7] *Golden Pacific Bancorp v. U.S.*, 25 Cl. Ct. 768 (Ct. Cl. 1992).

On November 22, 1991, a district court upheld the OCC's decision to allow a national bank to sell annuity contracts on an agency basis through a wholly owned subsidiary.[8] Although plaintiffs had argued that the sale of annuity contracts violated 12 U.S.C. 92, the court upheld the OCC's position that annuities were not insurance and, therefore, section 92 did not apply to their sale. The court sustained the OCC's explanation that annuities were primarily financial investment instruments rather than insurance. The court also sustained the OCC's argument that section 92 did not limit the incidental powers of national banks, but rather served as a source of supplemental powers for national banks.

[8] *Variable Annuity Life Ins. Co. v. Clarke*, 786 F. Supp. 639 (S.D. Tex. 1991).

Stephen T. Freeland
Litigation Division

Speeches and Congressional Testimony

Statement of Stephen R. Steinbrink, Acting Comptroller of the Currency, before the House Committee on Banking, Finance and Urban Affairs, on Equal Employment Opportunities at the Office of the Comptroller of the Currency, Washington, D.C., June 4, 1992

Mr. Chairman and members of the committee, I appreciate this opportunity to testify on the efforts that are underway at the Office of the Comptroller of the Currency (OCC) to provide equal employment opportunities (EEO) for all persons and contracting opportunities to minorities and women. The first half of my statement will focus on the OCC's equal employment opportunity program. I will summarize the OCC's EEO policy and program, give some figures on current OCC employment of minorities, women and disabled employees, and describe our efforts to improve program effectiveness. The second half of my statement will focus on the OCC's outreach program for minority and women's contracts under section 8(a) of the Small Business Act, and provide some figures on contracts awarded to minority- and women-owned businesses.

Equal Employment Opportunity

Statutory and Regulatory Background

Executive Order 11478 (Executive Order) which was signed in 1969 requires each executive department and agency to establish and maintain an affirmative program of equal employment opportunity for all civilian employees and job applicants. As a bureau of the Department of Treasury, the OCC operates under the Executive Order. We also adhere to the regulations of the Equal Employment Opportunity Commission (EEOC), and to equal employment opportunity directives issued by the Treasury Department. OCC's Policies and Procedures Manual (PPM) 3100-27, "EEO Program Administration," dated October 29, 1991, provides internal guidance on OCC-wide and district EEO and affirmative employment (AE) program requirements.

EEO Program Organization and Staffing

The OCC EEO program encompasses EEO, AE for minorities, women, and persons with disabilities, special activities that focus on minority and female EEO concerns, informal complaint processing, and a new initiative, managing diversity. This new initiative aims at creating an environment where individuals contribute to achieving OCC's goals to the full extent of their abilities. To achieve this objective, we are developing strategies to identify and address employees' workplace concerns and to train all employees in valuing and managing diversity effectively. All aspects of our equal employment opportunity program are administered by the OCC's Equal Employment Programs Division (EEP), with the exception of affirmative employment for the disabled, which our Human Resources Division handles. We evaluate EEO activities through OCC's Quality Control Review (QCR) process. The director of the division reports to the Deputy Comptroller for Resource Management, and has direct access to senior management and open lines of communication to other OCC managers, supervisors, and employees. The division's budget provides adequate resources for program activities.

EEP's staff currently includes six full-time positions: a director, three EEO specialists, a program analyst, and an EEO assistant. Two district offices have permanent EEO staff. The Southwestern District has a full-time EEO specialist, and the Western District has a part-time EEO manager. Other OCC staff perform EEO duties in the Washington office and districts on a voluntary basis. They include EEO counselors, special emphasis managers (SEMs) and employee advisory groups. Several districts also use staff as EEO contact persons in the field offices and duty stations to exchange information. The Washington office and districts also have disability coordinators to ensure that OCC meets its goals for disabled employees.

Over the years, we have pioneered a variety of innovations in EEO program administration. Some of our significant accomplishments include development of an EEO counselor's performance evaluation form that was adopted by Treasury's complaint centers; development and implementation of customized EEO training in such areas as sexual harassment; institution of our new program for managing diversity; and institution of an annual EEO award. OCC also developed an employee EEO/AE handbook to educate managers about their responsibilities and employees about their rights. OCC also publishes a quarterly management-oriented newsletter that provides information about OCC and national EEO issues.

Finally, OCC has served as a leader to other Treasury bureaus, bank regulatory agencies, and other federal agencies regarding EEO. OCC staff spearheaded an EEOC briefing on the 1991 Civil Rights Act and EEOC's upcoming regulations, 29 CFR Part 1614, for OCC and Treasury EEO staff. The Central Intelligence Agency assigned a staff member to OCC on a one-month detail

to observe OCC's EEO operations and OCC's managing diversity efforts. Finally OCC staff provides consultative services to Treasury, the National Credit Union Administration, Office of Thrift Supervision, Blacks In Government, and Internal Revenue Service (IRS) staff on EEO program activities, EEO training for management, and work force diversity issues.

Program Results

As a result of the OCC's affirmative employment initiatives OCC's employment of minorities and women has increased significantly. Twelve years ago, minorities represented 16.7 percent of total OCC employees, and women represented 36.2 percent. Today, those figures are 20 2 percent and 43 7 percent, respectively. The greatest gains have been achieved by Asians, Native Americans, and Hispanics. White and black women also had significant increases. Only black men experienced a percent decrease, dropping from 4.6 percent to 4 4 percent of OCC employees.

Table I
OCC Employment
(by race within sex group)

	1980		1991		% Increase
	#	%**	#	%**	(Decrease)
MALE EMPLOYEES					
Asian	19	5	40	1 1	110 5
Native American	8	2	9	3	11 1
Hispanic	63	1 7	68	2 0	7 9
Black	168	4 6	154	4 4	8 3
White	2 058	56 7	1 690	48 5	-17 9
FEMALE EMPLOYEES					
Asian	21	6	43	1 2	161 9
Native American	2	*	5	1	150 0
Hispanic	42	1 2	54	1 5	28.6
Black	282	7 8	336	9 6	19 2
White	966	26 6	1 087	31 2	16 0
Total	3 629		3 486		

*Less than 1 percent
** Column does not equal 100 percent due to rounding

The OCC's major occupational category is composed of bank examiners. Minority groups and white women are currently represented in the bank examiner work force at or near their respective percentage of the national civilian labor force (see Table II)

Table II
Representation of Minorities and Women
in Bank Examiner Work Force
1991

	Bank Examiners		National Civilian Labor Force
	#	%	%
MALES			
Black	94	3 9	3 6
Hispanic	58	2.4	2 8
Asian	30	1 3	1.0
Native American	10	4	3
FEMALES			
White	640	26.8	26 6
Black	93	3 9	3 1
Hispanic	35	1 4	1.3
Asian	21	9	5
Native American	3	1	1
Total Examiners	2 386		

The OCC also has made progress in promoting minorities and women to more senior positions. Between 1980 and 1990, the number of minorities and women at pay grades corresponding to GS 13-15 increased by 291.9 percent and 531.5 percent respectively (see Table III). The number of women in executive level positions also increased, by 250 percent.

Table III
Representation of Minorities and Women
in Grade Levels CP 7-12 (GS 13-15 equivalent)

	1980		1991		% Increase
	#	%**	#	%**	(Decrease)
MALE EMPLOYEES					
Asian	2	2	12	.9	500.0
Native American	1	1	5	4	400 0
Black	16	2 0	37	2 9	131 3
Hispanic	11	1 4	25	1 9	127 3
FEMALE EMPLOYEES					
Asian	1	1	12	9	1 100 0
Black	5	6	45	3 5	800 0
Hispanic	1	1	8	6	700 0
White	47	5.8	275	21 4	485 1
Native American	0	0	1	1	100 0
Total Employees	810		1,283		
Total Women	54	6 7	341	26 6	531 5
Total Minorities	37	4 6	145	11 3	291 9

To comply with the compensation provisions contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the OCC restructured its compensation plan in January 1991, making it difficult to compare 1991 grade levels to pre-conversion grade levels. However, the percentages of women and minorities in entry to mid-level staff positions (grades OC-8 through OC-16/GS-8 15 equivalent) under the new pay schedule are comparable to their percentages

in the total OCC work force (see Table IV). At supervisory levels, however, progress has been more gradual. White women represent 31.2 percent of the total OCC work force, but represent 19.8 percent of managerial and supervisory positions and 17.6 percent of executive positions. Minorities represent 20 percent of the total OCC work force, but represent 11.5 percent of supervisory positions and under 3 percent of executive positions.

Table IV
1991 Representation of Minorities and Women at Entry and Mid Grade Levels and in Supervisory Positions

	Total OCC %	OC 8-16 %	Managers & Supervisors %
MALE EMPLOYEES			
Asian	1 1	1 3	3
Native American	3	.3	.3
Hispanic	2 0	2.3	6
Black	4 4	4 1	3 4
White	48.5	48.4	67.9
FEMALE EMPLOYEES			
Asian	1.2	1.3	.9
Native American	1	.2	.3
Hispanic	1 5	1.5	.3
Black	9.6	8 1	5.4
White	31.2	32 4	19.8

Despite our progress, more needs to be done. Our most recent analysis indicates that the OCC needs to increase the total representation of Hispanics and Native Americans in the professional work force and to improve the representation of minorities and women in higher grade levels (OC 16-21) and supervisory and managerial positions. Under the affirmative employment plan for disabled persons, we need to continue our efforts to increase their representation in the work force. Disabled employees were 3 percent of the work force in 1989 and 3.5 percent in 1991.

EEO Complaint Activity

Between 1980 and 1989, OCC averaged 5 complaints per year. The largest percentage of formal complaints were based on race (37.9 percent) followed by sex (24 percent) and reprisal (10.3 percent). The number of formal complaints filed in 1990 increased to 10 and in 1991 to 11. Five complaints have been filed since January 1992. Of the complaints filed between January 1990 and May 1992, 24.2 percent concerned race, 24.2 percent concerned age, 21.2 percent concerned sex, and 12.1 percent concerned disability. To some extent, the rising number of complaints reflects increased awareness of EEO issues and increased numbers of employees 40 and over in our work force. Nevertheless, we plan to address EEO and other employee concerns through our managing diversity initiatives.

The problems that agency EEO programs have been designed to remedy developed over a long period of time. Consequently, they do not lend themselves to quick or easy solutions. But I believe the information provided today on OCC's initiatives in this area clearly attests to our commitment to achieving the objectives of Executive Order 11478. I also believe that it demonstrates that we are actively addressing the Executive Order's requirements. Most importantly, I am confident that our forward thinking and innovative approaches have positioned OCC for leadership in Federal EEO program administration.

Minority and Women's Outreach in Contracting

The OCC has demonstrated a commitment to minority- and women-owned business contracting since the early 1980s, when we began setting annual Small Business Program goals with the Treasury Department's Office of Procurement. The Small Business Program, which encourages participation in the 8(a) Program (established under section 8(a) of the Small Business Act), provides for contracts to be "set aside" for minority- and women-owned businesses. Hence, we were already making significant efforts to expand contracting opportunities for minorities and women several years before enactment of FIRREA.

Section 1216(c) of FIRREA requires the OCC (along with the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation) to establish an outreach program that ensures the maximum participation by minorities and women in the agencies' outside contracting. Given the section's enactment as a part of FIRREA, it appears that a primary purpose of this provision was to ensure that a fair share of government contracts (specifically, financial services, investment banking, underwriting, accounting, legal services, management of institutions, asset management, and disposition) generated by the resolution of insolvent financial institutions would go to minority- and women-owned businesses; however the provision also applies to "such other functions authorized under any law applicable to such agency." We understand this to mean that the minority- and women-owned business provision of FIRREA extends to all contracting activity by the named agencies.

Compared with certain of the other agencies designated in section 1216(c), the OCC spends relatively less money on contracts. Contracts awarded by the

OCC in fiscal year 1991 totalled roughly $36 million, out of a total agency budget of $294 million (approximately 12 percent). The OCC rarely awards any outside contracts for bank supervision services; these functions are performed by OCC employees. Furthermore, the OCC does not dispose of any banking or financial industry assets. Contracts entered into by the OCC with privately owned companies are primarily for general services and supplies needed to support OCC's supervisory mission. Services acquired through contracts awarded to minority- and women-owned businesses include microcomputer hardware and software integration, automated data processing training on hardware and software, automated data processing programming and consultation, graphic design and production; legal consultation; financial management consultation; mail and messenger services; data entry; and micrographics. Goods procured through such contracts include microcomputers, employee service awards, and automated data processing software accessory equipment.

Section 1216(c) calls upon each agency to issue implementing regulations. In part because of the small scale of OCC contracting, we decided to continue to increase our participation in the Treasury Department's Small Business Program and postpone publication of a separate regulation. Although we have not yet issued our own regulation, our program conforms with regulations issued by the Small Business Administration. I believe this is a sensible way of satisfying the intent of section 1216(c) efficiently, with a minimum of administrative expense and regulatory burden. At this time, we are drafting a regulation that will assign responsibility within the OCC for administration of an outreach program, which we anticipate will consist of promotion, solicitation, certification, and award components.

Program Results

The following table provides a breakdown of OCC contract awards to small disadvantaged (both socially and economically) businesses for fiscal years 1987 through 1991. Although businesses owned by nonminority women are not considered small disadvantaged businesses for the purpose of the Small Business Act, we actively pursue awards to such businesses. Therefore, the table also provides dollar amounts of contract award obligations to women-owned businesses during the same period. Contract award amounts to businesses owned by minority women are included in both categories, as this is the standard reporting method to the Treasury Department's Office of Procurement.

Obligations for OCC Contract Awards

Fiscal Year	Total Obligations	Small Disadvantaged Businesses	Women-Owned Businesses
FY1987	$26,141,000	$2,347,000	$ 208,000
FY1988	$26,303,000	$4,111,000	$ 107,000
FY1989	$30,021,000	$3,712,123	$2,172,018
FY1990	$34,106,000	$5,173,000	$2,206,957
FY1991	$35,807,000	$5,430,000	$2,414,128

The OCC awards a significantly higher fraction of total contract awards to minority- and women-owned business contractors than does the average federal agency. According to the Small Business Administration, awards by civilian federal agencies to minority- and women-owned business contractors averaged 5.1 percent of total contract awards in fiscal year 1990 (the most recent year for which statistics are available). In the same period, the OCC awarded 15.4 percent of its contract dollars to minority- and women-owned businesses. In fiscal year 1991, OCC awards to minority- and women-owned businesses again were 15.3 percent of total contract dollars ($5.5 million out of $36 million).

At the moment, the total value of all active contracts (inclusive of past, present, and future obligations of those contracts) awarded to minority- and women-owned businesses is $19.1 million, or 29 percent of our total contract value of $65,099,005. Additionally, the OCC's Procurement Office currently has pending two minority contracts for automated data processing goods and services, for $5,000,000 each, with awards projected for June and July 1992, respectively. With these awards, our minority and women-owned business contract value will exceed $29,000,000 and be nearly 39 percent of our total contract value.

Conclusions

The OCC has a record of promoting employment and contracting opportunities that substantially predates the enactment of FIRREA. Since enactment, the OCC has improved on that record. We will continue to make equal opportunity programs a top priority of the agency.

Statement of Stephen R. Steinbrink, Acting Comptroller of the Currency, before the Senate Committee on Banking, Housing, and Urban Affairs, on the the supervision and condition of national banks, Washington, D.C., June 10, 1992

Mr. Chairman and members of the committee, thank you for this opportunity to discuss the condition of the banking industry and issues related to supervision. As Acting Comptroller of the Currency, I will focus my comments on the supervision and condition of national banks.

My testimony is divided into four sections, which correspond to the questions in your invitation letter. The first section outlines the efforts the Office of the Comptroller of the Currency (OCC) has taken in the past 18 months, and plans to take in the near future, to improve our supervisory practices. As my statement will describe, we have revised our examination operating plan, rewritten our enforcement and fair lending policies, taken steps to increase our examiner staff, and made efforts to minimize regulatory burdens. We are working actively with the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) to implement a system that will monitor and impose capital charges for interest rate risk in commercial banks.

The second section of my statement reviews the OCC's efforts to implement provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). When our efforts to implement the regulatory changes required by FDICIA are complete, we will have made changes to nearly every area of OCC regulation and practice. We are devoting substantial resources in order to complete them by their respective statutory deadlines; and, in all cases, we are implementing the required changes in coordination with the other agencies.

The statement's third section describes the financial condition of the banking industry. The aggregate condition of national banks showed modest improvement in 1991, but aggregate profitability remains below historical levels, and credit quality problems remain. Banks in the Northeast and West, as well as large multinational banks, may regain their economic health more slowly than the rest of the industry, largely because of problems in their non-residential real estate portfolios.

The fourth and final section of the statement addresses the national banking industry's future prospects and the critical need for structural reform.

OCC Supervisory Initiatives

The OCC is continuously refining its tools and procedures for supervising national banks, with the objective of encouraging and reinforcing sound decision making by bank managers. In late 1991, we issued our second annual examination operating plan. In 1992, we initiated the process of hiring 600 new examiners. These additional resources will enable us to conduct more individual bank examinations and asset quality reviews. In November of 1991, we rewrote our enforcement policy to clarify conditions under which the OCC will take enforcement action. In April of this year, along with the other federal banking agencies, we initiated the Regulatory Uniformity Project, whose objective is to promote consistency and reduce unnecessarily burdensome regulation. In recent months, the OCC has taken steps to enhance its ability to detect and combat illegal discrimination in bank lending. We are also working together with the FRB, the FDIC, the OTS, and the Basle Committee on Banking Supervision of the Bank for International Settlements to develop a supervisory system for monitoring interest rate risk in commercial banks. We will draft capital standards for interest rate risk later this year.

Bank Examinations

In each of the past two years, we issued annual operating plans to place greater emphasis on individual bank examinations and asset quality reviews. Our supervision plan for 1991 required full-scope examinations, with emphasis on the evaluation of asset quality, for all banks with more than $1 billion in assets and all problem banks. Those banks account for more than 80 percent of the assets supervised by the OCC. In 1991, the OCC completed on-site safety and soundness examinations in 87 percent of national banks or banking companies.

The 1992 examination operating plan places even greater emphasis on individual bank examinations. With the exception of the healthiest community banks, which are required to be examined every 18 months, we are now requiring the examination of all national banks or companies on an annual basis. The 1992 plan specifically requires asset quality assessments, which include review and testing of lending practices, policies, systems, and controls, and credit analysis of commercial loans. As a general rule, the review of

commercial loans covers at least 30 percent of the commercial loan portfolio

Examiner Workforce

In order to implement the 1992 examination operating plan and the examination cycles required by FDICIA, the OCC is significantly increasing the size and redirecting the focus of its examiner workforce. In 1991, we increased our examiner staff by the equivalent of 330 examiner work-years. We hired 150 new examiners in 1991 to accommodate nearly half that increase; the remaining portion of the increase was the result of our re-directing existing staff previously assigned to support, non-examiner training, and other non-examination related duties.

From January 1, 1992, through May 30, 1992, the OCC hired 174 new examiners. We plan to hire a total of 300 new examiners in 1992 and 300 additional examiners in 1993. This represents an approximately 30 percent increase in total examination staff. In addition, we have revised our hiring policy over the last several years to increase the experience level of our examiner staff. Beginning in 1989, the vast majority of our new hires have been individuals with direct experience in the financial services industry. As a result, the overall experience level of our examiners has increased.

Enforcement Policy

In addition to examinations, the OCC uses a number of other tools to carry out its supervisory responsibilities. Those tools include enforcement actions, which are used to secure or formally record bank management and board commitments to take remedial measures that address our supervisory concerns. We take formal enforcement actions — which include formal written agreements, consent orders, removals and prohibitions, cease and desist orders, capital directives, and civil money penalties — when we find serious compliance problems or significant safety and soundness problems that pose a threat to the bank's condition. In those cases, we formalize necessary corrective action in a legally binding form to ensure that a bank recognizes our concerns and commits to responding adequately to the gravity of the situation. We take informal actions — which include board resolutions, commitment letters, and memoranda of understanding — to provide bank management with guidance and direction in addressing weaknesses in management or procedures before those weaknesses result in more serious problems.

The OCC revised its enforcement policy in November 1991 to make more effective use of enforcement actions. The revised policy establishes new presumptions that the OCC will take formal enforcement actions under certain circumstances. For example, the policy establishes the presumption that the OCC will take formal action when banks are assigned a CAMEL rating of 4 or 5; when a bank is found to have significant problems in its systems, controls, internal audit programs, operating policies and methods of operations, or in its management information system; in cases of significant insider abuse; or where we identify significant compliance problems or substantial violations of law. Other circumstances which may warrant formal action include cases where the banks or individuals have disregarded or refused to respond to our prior efforts to correct serious problems, or when banks have not complied with previous written commitments to address areas of weakness.

As noted in our Annual Report to Congress, the number of actions we initiated against national banks or individuals increased from 842 in 1990 to 1,494 in 1991, and the number of completed enforcement actions (i.e, actions that were resolved to our satisfaction) increased from 760 actions in 1990 to 1,269 in 1991. At year-end 1991, the OCC had outstanding either a formal or informal enforcement action against approximately 30 percent of the national banks it supervises.

Fair Lending

Data released last October by the Federal Reserve Board on home mortgage lending by financial institutions show a significantly higher denial rate for home mortgage applications from blacks and Hispanics than for those from whites. In an advisory letter distributed in December, 1991, the OCC communicated to all national banks its supervisory concerns about the racial and ethnic disparities revealed by the data. We strongly recommended that bank managers undertake a review of their institutions' adherence to fair lending laws and performance under the Community Reinvestment Act, and we advised them to review underwriting practices and decision-making processes to determine the reasons for existing disparities in the disposition of loan applications by different racial and ethnic groups. We asked bank managers to report their findings to the full board of directors and to be prepared to document and discuss with our examiners and the public the reasons for any lending disparities.

In February, 1992, following receipt of the final data, we identified institutions that exhibited lending patterns suggestive of possible discrimination. Factors we considered included very low numbers of applications from black or Hispanic creditseekers and substantially higher denial rates for black and Hispanic applicants. We have transmitted this information to our six district

offices, which are now in the process of following up with the identified institutions.

Regulatory Burden Reduction

In response to the Presidential Regulatory Initiative that began on January 28, 1992, the OCC undertook an intensive review of all regulations and programs, with the objective of identifying areas that may impose unnecessary burdens or costs on national banks or the public. The review is part of our continuing effort to balance legitimate concern for safety and soundness of the commercial banking industry against unduly burdensome regulation. OCC participation in the FDICIA-mandated FFIEC study on regulatory burden, discussed in the next section of the statement, is part of that effort.

In April of this year, the federal banking agencies initiated the Regulatory Uniformity Project. The project is a joint effort by the OCC, the FRB, the FDIC, and the OTS to promote consistency and reduce regulatory burdens and costs, without lessening the effectiveness of regulation and supervision of insured depository institutions. The four agencies are working together to apply uniform policies and regulations in the implementation of similar federal statutes; to unify, simplify, or eliminate duplicative or outmoded policies, procedures, and regulations which unnecessarily burden depository institutions; and to further strengthen the coordination of policies, procedures, and regulations with state supervisors of banks and thrifts.

Capital Standards for Interest Rate Risk

The OCC is strengthening its supervisory efforts to address interest rate risk in banks. In recent years, as commercial banks have increased their lending for residential real estate, we have focused more attention on interest rate risk in banks. On January 2, 1990, we sent an advisory letter to all national banks alerting them to our concerns about interest rate risk. The letter outlined our expectations that all banks should have comprehensive interest rate risk management systems and should establish limits on their exposures to changes in interest rates. We developed and issued detailed examination procedures for evaluating interest rate risk and increased the number of training seminars that are available to examiners. We have also developed OCC experts in capital markets to participate in examinations in the field and at each of the multinational banks we supervise.

Section 305 of FDICIA requires all federal banking agencies to revise their risk-based capital standards to take account of interest rate risk by June 1993. We are working actively with the FRB, the FDIC, and the OTS to develop a system to measure and monitor interest rate risk in commercial banks and to incorporate interest rate risk into our assessment of a bank's capital adequacy.

FDICIA Implementation

FDICIA provides the federal banking agencies, including the OCC, with significant new duties and responsibilities. The new legislation requires us to make fundamental revisions to virtually every area of supervision policy. We are devoting a large portion of our resources in an effort to implement each FDICIA task by its respective statutory deadline. We have assigned a project team to each of the approximately 60 tasks that we have identified as being required by FDICIA. An oversight group, composed of senior OCC officials, is supervising the project teams and meeting regularly with senior management of the other agencies to ensure a coordinated and consistent approach to implementation.

Our FDICIA-related efforts will result in substantial new rulemakings and new regulatory guidelines that would amend current practice in areas such as chartering, supervision of both healthy and troubled institutions, and enforcement. In every instance, we are coordinating our work with the other federal banking regulators. This will enable us, wherever possible, to achieve uniformity with changes that are being made at the other agencies and to take fully into account the burden those changes may impose on the banking industry.

The calendar for the changes in OCC regulations that FDICIA requires extends through the end of 1993. Throughout the process, we will work with the other agencies to accomplish the changes by the specified statutory deadlines.

The OCC is mindful that the compliance burdens imposed by bank supervision can affect the competitiveness of national banks and their ability to meet the credit needs of the communities they serve. The changes to our regulations for real estate appraisals and capital standards for intangible assets that I will discuss below have been made to reduce or eliminate unnecessary burdens without compromising safety and soundness.

Prompt Corrective Action

One of our project teams is currently working with the other federal banking agencies on a notice of proposed rulemaking that will implement section 131 of FDICIA. Section 131 establishes a capital-based supervisory system which classifies banks into one of five categories based on their capital levels and mandates specific corrective actions for all but the most strongly

capitalized banks. The number and severity of those supervisory actions increase as a bank's capital declines. This program of prompt corrective action is designed to lower the cost of bank failures to the deposit insurer. FDICIA requires the agencies to issue a final rule by September 19, 1992, and we expect the new regulation to become effective by year-end.

Safety and Soundness Standards

Another project team is participating with other agencies in drafting an advanced notice of proposed rulemaking on the safety and soundness standards required by section 132 of FDICIA. Our objective will be to identify problem institutions in sufficient time to enable them to seek methods to resolve their problems and minimize the possibility of loss to the deposit insurance fund. The agencies will share the comments they receive, and will work together in formulating the proposed and final rules. The statute requires that we issue final regulations by August 1, 1993, and we expect those regulations will become effective by December 1, 1993.

Real Estate Lending Standards

As required by section 304 of FDICIA, an OCC project team is participating in an interagency effort to draft uniform real estate lending standards. The proposed standards will soon be published in the *Federal Register* as a notice of proposed rulemaking. Our objective is to develop standards that will protect the deposit insurance funds without unduly restricting banks' ability to make prudent loans to finance real estate construction and mortgages.

Real Estate Appraisals

On April 2, the OCC released a final rule that revises the appraisal regulation promulgated under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The final rule increases from $50,000 to $100,000 the loan amount above which an appraisal is required for real estate-related transactions. This change will reduce costs and delays associated with obtaining real estate loans of less than $100,000, and should ultimately increase the availability of housing credit to low- and middle-income households. In addition, as required by section 472 of FDICIA, the rule delays until December 31, 1992, the requirement that national banks must use certified and licensed appraisers to perform real estate appraisals.

Capital Treatment of Intangibles

On April 6, we issued a proposed rule amending the risk-based capital guidelines for the treatment of intangible assets held by national banks. The proposed rule would allow banks to increase qualifying intangible assets — purchased mortgage servicing rights (PMSR) plus purchased credit card relationships (PCCR) — to 50 percent of their Tier 1 (equity) capital. For the first time, banks would be permitted to include purchased credit card relationships (PCCR) on the balance sheet for capital adequacy determinations. PCCR could not exceed 25 percent of a bank's Tier 1 capital. (There would be no limit on how much of the 50 percent limit could consist of PMSR.)

While we have raised the limits, we have also introduced controls to ensure that banks assign realistic values to PMSR. We took advantage of the timing of the proposed rule to implement section 475 of FDICIA, which states that the amount of readily marketable purchased mortgage servicing rights that are included in capital may not be valued at more than 90 percent of their fair market value. As the statute directs, we will require banks to update their determinations of fair market values at least quarterly.

FFIEC Regulatory Burden Study

The OCC is participating in the FFIEC study of regulatory burden on insured depository institutions, mandated by section 221 of FDICIA. The FFIEC is reviewing the policies and procedures, and recordkeeping and documentation requirements for monitoring and enforcing compliance with all banking laws under the jurisdiction of the federal banking agencies and the Secretary of the Treasury. The FFIEC will also identify any revisions to these policies, procedures, and requirements that would reduce unnecessary burdens on insured depository institutions. As directed by statute, those revisions may not lessen compliance with, or enforcement of, consumer laws or adversely affect the safety and soundness of those institutions. To that end, the FFIEC is holding three public hearings this month to solicit public comment on these issues.

The Financial Condition of the National Banking Industry

The performance of the national banking industry improved slightly in 1991 over 1990 levels. Aggregate earnings and profitability, as measured by return on assets and return on equity, increased modestly in 1991, and most national banks improved their capital positions.

Despite the improvement in aggregate earnings, aggregate industry profitability remains weak relative to historical standards. Many banks suffer from credit quality problems stemming largely from problems in

their non-residential real estate portfolios. The problems of low profitability and weak credit quality are more severe for banks in the Northeast and the West, and the large multinational banks.

Earnings and Profitability

Aggregate earnings of national banks increased in 1991 over 1990 levels; net income increased by 25 percent, from $7.3 billion in 1990, to $9.1 billion in 1991. As Table 1 indicates, the 1991 level of aggregate earnings was on a par with levels in the 1980s, but was approximately 32 percent below the 1988 peak of $13.6 billion.

Table 1
Aggregate Net Income*
(all national banks)

Year	*$ Amount*
1981	$ 8,182
1982	8,194
1983	8,031
1984	8,307
1985	9,857
1986	9,521
1987	–276
1988	13,610
1989	10,394
1990	7,337
1991	9,136

*in millions of dollars
source: call reports

About $1.8 billion of the improvement in total bank earnings, on a pre-tax basis, was derived from gains from sales of securities. Much of these gains were the direct result of declining interest rates. Future earnings on securities sales, as well as unrealized gains on securities that banks are holding for investment purposes, could be jeopardized if interest rates were to rise.

While securities gains did represent a substantial portion of 1991 income, these gains were not the result of the practice of selectively selling securities that have increased in value while holding onto those that have fallen in value. Such practices would be a matter of concern to the OCC, since the sale of appreciating assets but not depreciating assets gives a false impression of the balance sheet and income statement, and — to the extent that the bank's best assets are dissipated — weakens the bank's long-term prospects. During 1991, however, falling interest rates increased the value of nearly all securities: those that banks retained as well as those that they sold. Thus the securities gains represent a legitimate addition to bank earnings. Furthermore, because of the decline in interest rates during 1991, the market value of investment securities remaining in bank portfolios greatly exceeds their book value; i.e., significant unrealized gains remain.

National bank profitability, measured by return on assets (ROA), increased moderately in 1991, but remained below historical levels. Mean ROA for national banks rose by approximately 24 percent in 1991 to 0.47 percent, but that figure is still below ROA in all but two of the past ten years. (See Table 2.)

Table 2
Aggregate Return on Assets
(all national banks)

Year	*Percent*
1981	0.71
1982	0.66
1983	0.60
1984	0.58
1985	0.63
1986	0.57
1987	–0.02
1988	0.76
1989	0.55
1990	0.38
1991	0.47

source call reports

The mean return on equity (ROE), the ratio of net income to average equity, followed a similar pattern. ROE for national banks increased in 1991 to 7.48 percent, as compared with the 1990 level of 6.36 percent, but ROE in 1991 was lower than in all but two of the past 10 years. (See Table 3.)

Table 3
Aggregate Return on Equity*
(all national banks)

Year	Percent
1981	13.03
1982	11.93
1983	10.64
1984	9.96
1985	10.72
1986	9.74
1987	-0.28
1988	13.17
1989	9.40
1990	6.36
1991	7.48

*Net Income as a Percent of Average Equity
source call reports

Table 4
Equity Capital to Assets
(all national banks)

Year	Percent
1981	5.47
1982	5.52
1983	5.66
1984	5.87
1985	5.90
1986	5.87
1987	5.64
1988	5.86
1989	5.75
1990	6.04
1991	6.41

source: call reports

Capital

Aggregate capitalization of national banks, as measured by aggregate equity capital divided by total assets, increased in 1991. (See Table 4.) In part, that increase reflects banks' efforts to increase their cushion against credit quality problems.

The increase in capital occurred in all size categories. The ratio of equity capital to assets rose from 8.13 in 1990 to 8.23 in 1991 in banks with under $1 billion in assets; from 6.31 in 1990 to 6.91 in 1991 in banks with $1 to $10 billion in assets, and from 5.26 in 1990 to 5.48 in 1991 in banks with over $10 billion in assets. Moreover, by year-end 1991, the vast majority of national banks held capital well in excess of the minimum standards for risk-based capital that will be fully phased in at the end of this year. If those standards were fully in place today, all but 137 national banks, holding an estimated $195 billion in assets (out of a total of $1,981 billion in national bank assets), would be in compliance with the guidelines. Most of those banks not meeting the standards would miss the risk-based capital requirements by small margins.

Credit Quality

National bank performance continued to be impaired by credit quality problems in 1991. The volume of noncurrent loans (i.e. the sum of loans over 90 days past due and nonaccrual loans), decreased slightly in 1991. However because loan volume also declined, noncurrent loans as a percentage of total loans increased from 4.06 percent to 4.10 percent. (See Table 5.) That increase is due in large part to problems banks have had with their non-residential real estate lending; noncurrent real estate loans were 53 percent of all noncurrent loans in 1991. The ratio of noncurrent real estate loans to all real estate loans increased from 5.04 percent in 1989 to 5.37 percent in 1991. The ratios of noncurrent consumer loans to total consumer loans and noncurrent commercial and industrial (C&I) loans to total C&I loans also increased, but at slower rates. Other real estate owned (OREO) held by national banks has increased steadily over the past decade. The most dramatic increase occurred after 1988. OREO grew from $1.5 billion in 1981 to $6.7 billion by 1988 and to $17.7 billion by year-end 1991.

Table 5
Noncurrent Loans to Total Loans
(all national banks)

Year	Percent
1984	3.06
1985	2.78
1986	2.87
1987	3.78
1988	3.04
1989	3.22
1990	4.06
1991	4.10

source call reports

Further evidence of the credit quality problems experienced by national banks in 1991 is the continuing increase in net loan losses. Loan losses increased by 10 percent from 1990 to 1991 to $31.5 billion. In 1991 loan losses at national banks were 1.70 percent of loans. In the early 1980s losses were less than one percent of loans Loss rates have increased for all major types of loans. Consumer loans continue to have the highest loss rate, 2.23 percent. But, because consumer loans only make up 19 percent of loans, they are only 25 percent of loan losses.

The increase in national banks's real estate lending, coupled with the decline of real estate markets in recent years, has increased the percentage of losses that are from real estate loans. Still, real estate loans are 41 percent of the loan portfolio and 51 percent of noncurrent loans but only 28 percent of loan losses. One-to-four family residential real estate lending, the largest area of bank real estate lending, continues to have an extremely low loss rate — less than 0.2 percent of one-to-four family loans in 1991.

Changes in the Composition of Bank Portfolios

These changes are occurring against the backdrop of a shrinking and consolidating banking industry. At year-end 1987, there were 4,603 national banks; at year-end 1991, there were 3,781. Before 1990, banking system assets grew at a rate faster than inflation; in 1990 and 1991, total bank assets grew by less than 1 percent. Loan volume has declined; the $7.9 billion decline between the third and fourth quarters of 1991 was the fifth straight quarterly decline.

As loan volume has declined, the fraction of bank portfolios represented by securities has steadily increased. The ratio of total securities to total assets in national bank portfolios rose from 15.77 percent in 1990 to 18.18 percent in 1991.

Some observers have suggested that the shift from loans to securities — and Treasury securities in particular — was caused by risk-based capital rules that require banks to hold more capital against loans than against Treasuries. The evidence does not support that assertion. If the shift had been the result of capital adequacy regulation, it would have been most pronounced in banks that were closest to the minimum capital standard. That was not the case. Furthermore, we would have expected to see a flight from all types of high-risk-weight loans to securities. That was also not the case.

The most obvious explanation for the shift from loans to securities is the cyclically weak demand for loans during 1991, which resulted in smaller than normal spreads between rates of return for loans and securities. Recent news reports indicate the beginnings of a recovery in loan demand, which should make issuing loans more attractive.

Other Developments

Although total loan volume declined in 1991, both residential and commercial real estate loans held by national banks continued to grow. These were the only major loan categories that grew in 1991. Residential real estate lending by national banks grew by $16 billion or 6.4 percent in 1991, and almost doubled in size over the past five years. Commercial real estate lending, which grew dramatically during the late 1980s (increasing 43 percent from 1987 to 1990) grew less than 1 percent in 1991.

Large national banks also increased their off-balance sheet activities. Derivative products such as interest rate and foreign exchange swaps, options, and futures allow banks to provide services their customers need and provide new sources of income for banks.

Rapid growth in off-balance sheet activities can also pose risks, however. The OCC is working with national banks to ensure that they have in place proper risk limits, controls, and accounting systems to manage the risks of derivative products. In general, while the notional (principal) amount of off-balance-sheet activity has increased substantially, much of the holdings involve offsetting risks. Some derivative instruments used to hedge against the risks of traditional credit exposures actually decrease the riskiness of the bank's overall portfolio.

Specific Areas of Concern

As I noted earlier, not all sectors of the national banking industry are participating in the modest improvement in aggregate performance. Banks in OCC's Northeastern and Western districts, as well as the large multinational banks, are experiencing weaknesses in earnings and increased credit quality problems that stem partly from commercial real estate loans they made in the 1980s. The condition of banks in the Northeast and the West also reflects weak economic conditions in those regions. The near-term prospects for many of those banks to return to full health are limited.

The Northeast

While there was some improvement in performance in 1991, banks in the Northeast experienced earnings and credit quality problems The large number of unprofitable banks, the relatively weak capital positions and the high percentage of noncurrent loans are all

indications that there will continue to be performance problems among banks in the Northeast in 1992.

The 413 national banks in the OCC's Northeastern District (excluding multinationals, which are discussed separately below) had an aggregate ROA of 0.19 percent in 1991, up from -0.45 percent in 1990, but still well below the national average of 0.47 percent. Modest earnings in 1991 helped these banks increase their equity capital to 6.36 percent of assets. This represents a significant improvement from their 5.42 percent average capital ratio at the end of 1990. Improved earnings and increased capitalization provide some encouragement that, at least in the aggregate, national banks in the Northeast are beginning to recover from the significant losses experienced in 1990.

However, for the second consecutive year, over 20 percent of the banks in the region were unprofitable. Prior to the economic downturn in the region, fewer than 10 percent of banks had been unprofitable. Moreover, while the percentage of noncurrent loans in the Northeast (5.0 percent at year-end 1991) is lower than the 1990 level of 5.9 percent, it is still higher than the rate of any other OCC district. These statistics demonstrate that there are still many banks with significant problems in their current portfolios.

The West

National banks in the OCC's Western District began to feel the effects of the downturn in the region's economy in 1991. For the most part, the banks still show signs of strength; however, in 1992, there will be a significant increase in the number of problem banks.

The percentage of national banks in the Western District (again, excluding multinationals) reporting losses in 1991 is down slightly from 1990, but remains over 20 percent. This level is significantly higher than the national average, which is less than 13 percent. Credit quality problems increased dramatically in 1991, with the percentage of noncurrent loans increasing from 2.51 percent in 1990 to 3.51 percent in 1991.

Also of concern is the decline in income at these banks, dropping from $809 million in 1990 to $641 million in 1991. Only banks in the Northeastern District were less profitable in 1991. One reason for the decline in earnings was the increase in reserving for problem loans among these banks. Reserves grew from 1.53 percent of assets to 1.82 percent of assets in 1991.

The Multinational Banks

The large multinational banks, based on their size and market presence, continue to represent an area of supervisory importance for the OCC. Net income in 1991 fell by 46 percent from 1990 levels (from $2,995 million in 1990 to $1,630 million in 1991), even as bank securities gains rose from 1.5 percent of net income in 1990 to 21 percent in 1991. Profitability was also much lower in 1991 — ROA fell to 0.26 percent in 1991, from 0.48 percent in 1990, and ROE fell from 9.14 percent in 1990 to 4.80 percent in 1991.

Average capital ratios remained stable: the equity capital-to-assets ratio was 5.47 percent in 1990, as compared with 5.46 percent in 1991. Credit quality continued to decline, however; noncurrent loans rose from $22.5 billion in 1990 to $24.3 billion in 1991.

The multinational banks have taken steps to improve their health and performance. They have increased liquidity, issued new equity, strengthened their credit processes, and developed their networks for international business. A few banks are attempting to reduce costs and become more efficient, some through intermarket mergers. Those changes may enable them to take advantage of business opportunities accompanying the economic recovery.

Prospects for the Banking Industry's Future

Future industry performance is likely to be mixed. Any recovery in the economy is likely to help improve earnings, profitability, capital levels, and credit quality in the majority of national banks. It will be some time, however, before most banks regain previous performance levels. Weakness in commercial real estate loan portfolios will continue to impair bank performance until demand for commercial real estate catches up with supply, a process which, in some parts of the country, may take five years or more. As a result, we expect bank profitability to remain depressed below historical levels for some time to come. Bank failures remain at relatively high levels, and we expect those failure levels to continue.

The Need for Structural Reform

In the long run, the health and profitability of the industry will depend on its ability to compete with other financial services providers. Hence, the health of banks over the longer term will continue to be constrained unless changes are made to the outdated laws that raise their costs and limit their ability to compete.

The financial and technical innovations that have occurred over the past few decades have dramatically and irreversibly altered the banking landscape. Many of the laws under which banks now operate were enacted in a different banking environment. Today,

many of those laws add to the risks facing bank managers and the deposit insurance fund.

Geographic Restrictions

Geographic restrictions on banking and branching may once have served a useful purpose in promoting the development of local economies, when commerce in those economies relied more on local sources of funds. In today's integrated credit markets, local economies are no longer financially isolated, and geographic restrictions serve only to reduce competition, raising costs to the consumers of banking products and services.

Geographic restrictions also make banks more vulnerable to regional economic shocks. Removing these restrictions would enable banks to diversify their asset portfolios and sources of income more fully, reduce the impact of a shock in any particular region, and provide a greater margin of safety to banks and the deposit insurer.

Banking firms have overcome geographic restrictions to some extent by setting up multibank holding companies that take advantage of interstate banking opportunities. But their inability to consolidate such operations through direct interstate branching can impose operational redundancies that add to the cost of interstate banking. The cost of obtaining separate charters and of having separate boards of directors can be substantial. A number of banking firms anticipate significant savings in this area once restrictions on interstate branching are lifted.

Product Restrictions

Over the years, the lines separating different segments of the financial services market have become increasingly blurred. Commercial banks now face increased competition for household savings from a host of other providers. The nature of commercial lending has also changed, as many institutional lenders convert an increasing number of loans into securities. Yet commercial banks are restricted from participating fully in several of these growing markets.

Financial integration would benefit consumers by reducing the costs of a wide range of financial services, as firms compete for business by lowering prices and making their services more conveniently available. Financial integration would also give banking companies additional opportunities to diversify their portfolios and income sources. Diversification into a broader range of financial products and services would enable a banking company to achieve a target rate of return with more stable earnings and less risk of losses to uninsured depositors, investors, and the federal depositor insurer.

Conclusion

The banking industry developments that I have described pose continuing supervisory challenges to the OCC, and underscore our need to ensure that our bank supervision remains effective. The OCC is committed to providing the level and quality of supervision that is necessary to ensure the continued safety and soundness of the banking system. We are continuously refining and improving our supervisory methods as an increasingly complex and competitive banking industry poses new challenges.

Remarks of Stephen R. Steinbrink, Acting Comptroller of the Currency, before Women in Housing and Finance, Inc., on the effect of the Federal Deposit Insurance Corporation Improvement Act of 1991 on bank operations, Washington, D.C., June 18, 1992

I am honored to be here today to have a chance to talk to you.

I could make my presentation here today very short. In fact, I could sum it up in just six words: Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

It is a mouthful, isn't it?

In fact, it is a whole meal . . . a seven-course meal of bank regulations. We regulators are chewing over this new law now. We have to issue regulations for bankers and the public to digest. We have already begun loading up the plate. Not all of the regulations will go down easily. Some may cause indigestion.

What is this law — this law that we call FDICIA for short? It is a law passed last year to make sure bank failures do not cause more losses to the Bank Insurance Fund. When Congress did that, it wanted guarantees that it would not have to ante up taxpayer money — ever again.

How did Congress write these guarantees? It passed a law that requires the regulators to issue more stringent and more forceful rules for banks. The hope was that stricter regulation will prevent any more losses to the Bank Insurance Fund.

Some argue that the new law will have an added effect. Some argue that the new law will make it more difficult for banks to make money. Banks make money by managing risk. The new law, some feel, will stop that — stop banks from taking risks and stop banks from making money.

There is another concern with this new law. It is a concern I have as a regulator. This new law puts bank regulators in a dilemma. The dilemma is between more regulation and less regulation. The new law passed last year calls for more regulation. It requires a whole host of regulations in areas that were not covered by regulations before.

At the same time, we as regulators are called upon to reduce regulations. In January, President George Bush announced a plan to promote economic growth and to reduce the burden of government regulation. And he singled out bank regulation. President Bush has asked bank regulators to work together to reduce regulatory burdens.

The same law that requires us to issue new regulations also requires us to conduct a study of regulatory burdens. In fact, we are holding three public hearings on regulatory burden here in Washington, D.C. and two other cities today, tomorrow, and next Thursday. And next Tuesday, I am testifying on this subject before Congressman Frank Annunzio's Subcommittee on Financial Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs.

Do you see the dilemma? On the one hand, we are about to write a host of new and more burdensome regulations to implement the new law. On the other hand, we are expected to reduce burdensome regulations.

We have to walk a fine line. I have to tell you — it is not easy to walk a fine line between a rock and a hard place. The rock does not budge and the hard place does not soften. Our position can get very uncomfortable.

Depending on your viewpoint, you could describe the current regulatory environment as more accommodating. That is because of the push to reduce regulatory burdens. Or you could describe the regulatory environment as more adversarial. That is because of the new law.

I want to spend the rest of my time looking at the regulatory environment from this second viewpoint — the viewpoint of more regulation. My purpose is to demonstrate how much the life of the average banker is about to change — because of the regulations required by the new law.

When FDICIA was passed last November, it was widely described as a "narrow" banking bill. That was because it did not give banks the authority to set up interstate branches, or to offer securities or insurance services.

Describing FDICIA as a "narrow" banking bill is a little like describing the Mississippi as a nice little stream. Neither description does justice to reality.

As many of you know, FDICIA requires regulations that cover just about every aspect of bank operations. Some of those regulations are already in force — for

example, FDIC's restrictions on the use of brokered deposits by banks that are not well-capitalized

Others have only been issued for comment — for example, the proposed rule on disclosing savings account information to consumers, known as Truth in Savings

Still others will be proposed in the next few weeks. They cover everything from capital levels to credit underwriting standards . . . to loan documentation . . . to information systems . . . to how fast bank assets can grow. As I said, just about everything that goes on in a bank.

Like the Mississippi, FDICIA covers a lot of territory. But it is like the Mississippi in another way. When Mark Twain was learning to be a riverboat pilot, he wrote that, just when you think you know everything about the Mississippi, your boat will hit a sandbag that you never knew was there.

That is also true of FDICIA. It keeps coming up with surprises.

Let me give you one small example — an example that, up to this point, has been largely overlooked.

Section 112 of FDICIA breaks new ground in the area of bank auditing standards. From the new ground will rise a regulatory framework of new and broader auditing requirements for banks.

The framework has several important components. The first is a requirement for an external audit, once a year, for all banks bigger than $150 million.

The law also broadens the scope of audits. For the first time, auditors will have to give their opinion on the internal control structure for bank financial reporting. That means they will have to perform specific tests of internal control systems — tests that were not required before

That also means that auditors will have increased liability. They will spend more time on audits before they sign off on them.

And that means the cost of bank audits will increase. The lowest estimate that I have heard is a 15 percent increase. For a big bank, that could add at least $1 million to annual audit costs for just this single change in audit requirements

That is not the only responsibility given to auditors in FDICIA. For the first time, auditors will have to test for compliance with certain safety and soundness regulations.

I do not know how much this will add to bank costs. But I can give you a hint. The draft procedures to implement this requirement were 70 pages long at one point — 70 pages of step-by-step instructions for auditors to follow

It could be worse. The law could require auditor tests for all safety and soundness regulations. Instead, the law directs regulators to choose the safety and soundness regulations that auditors must test.

I want to emphasize that the safety and soundness regulations are the ones on the books now. That is an important distinction. As the FDICIA regulations become final, more of them could be added to the list.

There is another important element in this framework of auditing requirements. It affects the ability of banks to find qualified directors.

The law requires that bank audit committees be made up entirely of outside directors. That means no one from bank management. For banks over a certain size, these outside directors cannot be large customers of the bank, and they must have banking or related financial expertise.

These are the directors who are most liable for bank performance. These are the directors that the FDIC will hold accountable if the bank fails.

Just imagine that you are a $1 billion bank, and you have found someone in your community who is not a large customer but knows a lot about banking. If that person had doubts about serving as a bank director before, he or she now has even more reason to hesitate. These added requirements are not exactly an incentive to sign on to your local bank board

New regulations would not be complete without new reports to file. FDICIA requires a new annual report that includes the usual annual audit. But this report must also contain analyses of bank internal controls — one done by bank management and one done by the outside auditors.

The public relations departments of banks will be working overtime, because this new annual report is public. The bank has to give it out. Giving it out will probably be the easy part. Trying to explain internal controls to the public will not be so easy

Like many things in this business, more information in the public domain creates more opportunities for analysts — opportunities for analysts to make sense of the new information. This is called creating a market for tea leaf readers. I wonder if anyone has ever posed this

philosophical question: Just how much information can you cram onto a tea leaf?

I could ask a related question. How many regulations can you cram into the *Federal Register*? We may find out as we issue the regulations to implement FDICIA.

Let me give you an idea of the regulatory fire power behind FDICIA. At the Comptroller's office, we have 65 working groups assembled to write FDICIA regulations. The auditing issues I have been talking about occupy the work of just one group. There are 64 other groups working on other FDICIA regulations.

I started out by saying that six words describe the regulatory environment at this time. Six words that have major implications for banks and for regulators. Six words that carry a lot of weight in many different ways.

We cannot make the burden any lighter than the law will allow. Our leverage is limited. We must implement the law. However, we want to implement FDICIA in a way that is manageable. We do not want banks to collapse under the weight of regulatory burden. That would serve no one's interest.

Statement of Stephen R. Steinbrink, Acting Comptroller of the Currency, before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, on reducing the burdens of banking regulation, Washington, D.C., June 23, 1992

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to discuss efforts by the Office of the Comptroller of the Currency (OCC) to reduce the burdens of regulation on well-managed depository institutions. I would like to commend you, Chairman Frank Annunzio, for holding hearings on this important issue, which affects both banks and their customers.

The OCC strongly supports efforts to make banking regulation less burdensome. Regulations that are more costly than necessary increase bank operating costs, reduce profitability, drive up the cost of services to bank customers, and make it more difficult for bank managers to run their institutions. If these problems become severe enough, regulation intended to reduce risk can actually impair the safety and soundness of the banking system.

Clearly, we need strong and effective regulation of the banking industry. But in carrying out our responsibilities, we must recognize that bank managers have primary responsibility for operating their businesses. The OCC generally does not attempt to second-guess the business decisions of bank managers. Rather, our role is to ensure that banks operate safely and soundly and comply fully with all applicable banking laws and regulations. Inappropriate government intrusion into what should be business decisions will ultimately reduce the capacity of banks to respond to the requirements of the marketplace and impair their ability to attract and retain competent directors.

We also must guard against regulating to the lowest-common denominator. It would be counterproductive to subject well-run banks to the same degree of regulatory oversight that is necessary for problem institutions. To do so would limit the ability of well-run banks to develop innovative products and respond to changing customer needs, which is essential to remaining profitable in a competitive marketplace.

Mr. Chairman, I am grateful for this opportunity to speak to the steady growth in bank regulation that I have witnessed in my 25 years as a bank examiner. I am concerned about the legislative process when it mandates specific regulatory actions, but does not take into account the operational requirements and costs of achieving the desired results. I am also troubled by the "layering" of new regulations over existing ones without an accounting of the end result: overlapping, costly, and sometimes inconsistent regulations.

In part because of such concerns, the OCC is currently involved in several efforts to reduce regulatory burden. Some of these efforts were initiated by the OCC; others were initiated jointly by the bank regulators, by Congress, or by the Administration.

Regulatory Requirements of FDICIA

While the OCC is doing its best to carry out its responsibilities in a way that does not impose excessive burdens on banks, we must, and will, at the same time implement regulations that are required by statute.

The OCC recognizes that Congress enacted the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) in an effort to control the risk of loss that banking activities can pose to the federal deposit insurance system and, ultimately, to the taxpayers. We are making every effort to take burden into account as we implement FDICIA, but the requirements of the statute will unavoidably result in substantially increased regulatory burdens for all banks.

FDICIA provides the federal banking agencies, including the OCC, with significant new duties and responsibilities. The new legislation requires us to make fundamental revisions in virtually every area of OCC regulation and practice, including chartering, supervision of both healthy and troubled institutions, and enforcement. We are currently devoting a large portion of our resources in an effort to implement each FDICIA task by its respective statutory deadline. We have assigned a project team to each of the approximately 60 tasks that the banking agencies together have identified as being required by FDICIA. An oversight group, composed of senior OCC officials, is supervising the project teams and working with senior management of the other agencies

In every instance, we are coordinating our work with other federal banking regulators. This is not a new policy; in recent years, similar coordination has taken place through the Federal Financial Institutions Examination Council (FFIEC), of which the OCC is a member. Such coordination enables us to achieve uniformity with changes that are being made at the

other agencies, and to minimize the burdens associated with overlapping regulatory jurisdictions.

In many instances, however, the explicit language of the statute limits our ability to reduce regulatory burdens.

- Some sections create new programs and requirements which, while serving public policy goals, will be costly for banks to implement. For example, section 112 requires all but the smallest depository institutions to have independent annual audits. Virtually every large bank is already audited, but FDICIA would require the auditors to review its system of internal controls and test compliance with safety and soundness laws and regulations. The cost of complying with these requirements could in many instances exceed their benefits. There is also some question as to whether outside auditors have the necessary skills to take on these tasks.

- Numerous sections of FDICIA mandate supervisory enhancements that will increase reporting and record-keeping burdens for banks. For example, section 122 requires depository institutions to include annual reports on lending to small business and small farms in their reports of condition. While well-intended, section 122 will require some banks — many of which are also small businesses — to make extensive and costly changes in their internal recordkeeping systems.

- Other sections of FDICIA impose regulatory restrictions that may impair the ability of bank managers to run their businesses. For example, section 132 requires banking agencies to issue regulations setting standards for the compensation of officers, employees, directors, and principal shareholders of all national banks. Setting generally applicable compensation standards is an unwarranted intrusion into the business decisions of banks, which will make it much more difficult for them to attract competent managers and directors. We have adequate statutory authority, predating FDICIA, to take action against any banks that engage in abusive compensation practices.

Implementing FDICIA will unavoidably entail many such increases in regulatory burdens. Because FDICIA sets tight deadlines for issuing implementing regulations, banks will face the additional burden of adapting their operations to a large number of significant rule changes in a short period of time.

FDICIA Section 221 Regulatory Burden Study

Section 221 of FDICIA requires the FFIEC to conduct a review of all banking regulations and to identify revisions that would reduce unnecessary burdens without undermining compliance or enforcement of consumer laws or adversely affecting the safety and soundness of the banking system. While it can be argued that many regulatory burdens stem directly from the underlying statutes, the FFIEC is concentrating its efforts on how regulators implement those laws.

As part of its participation in the FFIEC study, the OCC has established a number of internal task groups that will conduct an extensive review of OCC regulatory policies, procedures, and requirements in coordination with other federal banking agencies.

The FFIEC is soliciting public comments and holding public hearings, as required by section 221, to obtain suggestions from consumers, community groups, small business organizations, and representatives of the banking and thrift industries. The FFIEC will also consider the public comments received by its member agencies as part of the Presidential Regulatory Initiative, which is discussed below. The FFIEC is required to report its conclusions to Congress no later than December 19, 1992.

Presidential Regulatory Initiative

In response to the Presidential Regulatory Initiative that began on January 28, 1992, the OCC has undertaken an intensive review of its regulations. One of the objectives of that review is to identify those that impose unnecessary burdens on national banks or the public. The review is part of our continuing effort to balance concern for safety and soundness of the commercial banking industry against unduly burdensome regulation.

To assist us in our review, we published a notice in the *Federal Register* soliciting ideas, issued a press release requesting specific suggestions, and mailed a Banking Bulletin to the chief executive officer of every national bank and to every OCC bank examiner soliciting their views. We also contacted state bankers associations and national trade groups to obtain their comments.

The OCC received 200 letters in response: 175 from financial institutions, 16 from banking industry associations, and nine from other institutions and individuals. Responses were frank and highly critical of the regulatory burdens imposed by bank regulation.

Many of the comments proposed changes that would require legislation. We were able to identify several

existing regulations, however, that we could revise without statutory changes, along with several burden-reducing initiatives already in the drafting stage that we could accelerate. We have already sent to the *Federal Register* a final rule that will allow banks to obtain real estate appraisals from less expensive sources and a notice of proposed rulemaking that would simplify the reporting and recordkeeping requirements for national banks under the Securities Exchange Act of 1934. Several other rule changes to help reduce regulatory burdens are being considered. We also identified several legislative initiatives which, if enacted, would streamline procedures for bank mergers and consolidations.

While the provisions we identified would reduce the regulatory burdens on banks and their customers, many bankers correctly point out that these reductions are rather small relative to the significant burdens their institutions already face. This criticism reflects, in part, the tight constraints placed on bank regulators by various statutory mandates.

At the end of April, the President extended for an additional 120 days the moratorium on new regulations that was announced on January 28. During this time, the agencies are to accelerate implementation of burden-reducing provisions identified during the first phase of the initiative. The OCC is currently proceeding with this further implementation.

Regulatory Uniformity Project

In April of this year, the OCC embarked on a joint effort with the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) to promote consistency in bank regulation. One of the goals of the project is to reduce regulatory burdens wherever it is possible to do so without compromising safety and soundness. The four agencies are working together to apply uniform policies and regulations in the implementation of similar federal statutes; to unify, simplify, or eliminate duplicative or outmoded policies, procedures, and regulations that unnecessarily burden depository institutions; and to strengthen the coordination of policies, procedures, and regulations with state supervisors of banks and thrifts.

Community Reinvestment Act Project

No single set of regulations receives more criticism for imposing unreasonable burdens on banks than that implementing the Community Reinvestment Act (CRA), which requires banks to help meet the credit needs of their community. It was on this single issue that the OCC received the largest number of responses (109) to its request for comments in connection with the Presidential Regulatory Initiative. Most commenters expressed the belief that the act was directed primarily at banks in the more populous, metropolitan areas, and they favored exempting small community banks from the act's requirements. They argued that the burdens of compliance impose substantial costs on community banks without commensurate benefits, and that these banks meet the requirements of CRA automatically since they typically operate almost entirely within the geographic confines of their community.

Approximately two months ago, the OCC set up an internal task group to review our CRA regulations. The OCC also participates in the Consumer Compliance Task Force of the FFIEC, which has a CRA working group. The work of these groups is being incorporated into the FFIEC regulatory burdens study and the Regulatory Uniformity Project. These interagency groups have been working on guidance to examiners emphasizing that evaluations of CRA performance should be based primarily on how well the institution serves the credit needs of its community, not on the amount of documentation it provides. The study groups are also considering ways to reduce regulatory burdens by simplifying and streamlining the CRA evaluation process.

Legislative Efforts to Reduce Burden

The OCC believes that full interstate banking and branching would help in reducing the regulatory burden on banks. We believe this can be achieved without undermining the role played by well-managed community banks, which can provide high-quality, personalized services to their clients.

Geographic restrictions on banking and branching may once have served a useful purpose in promoting the development of local economies, when commerce in those economies relied more on local sources of funds. In today's integrated credit markets, local economies are no longer financially isolated, and geographic restrictions serve only to reduce competition, raising costs to the consumers of banking products and services.

Banking firms have overcome geographic restrictions to some extent by setting up multibank holding companies that take advantage of interstate banking opportunities. But their inability to consolidate such operations through direct interstate branching can impose operational redundancies that add to the cost of interstate banking. The cost of obtaining separate charters and of having separate boards of directors can be substantial. A number of banking firms anticipate significant savings in this area once restrictions on interstate branching are lifted.

Removing geographic restrictions can also make banks less vulnerable to regional economic shocks. By enabling banks to diversify their asset portfolios and sources of income more fully, interstate banking can reduce the impact of a shock in any particular region and provide a greater margin of safety to banks and the deposit insurer.

Conclusion

The OCC is committed to identifying and eliminating unnecessary regulatory burdens on national banks. The importance of that task is accentuated by the new demands that FDICIA places on banks and their supervisors.

Unnecessarily burdensome regulation imposes a high price. It diminishes bank earnings and lending capacity, impairs the ability of banks to raise capital, and makes it harder for them to attract and retain competent directors. It can also impede product innovation and reduce the responsiveness of the banking industry to changing customer needs.

Because the goal of burden containment is so important, the OCC will continue to give it a high priority, within the constraints of statutory requirements and bank safety and soundness. To that end, we will continue to provide the Congress our views on ways to reduce regulatory burdens through legislative initiatives, and practice those same principles when designing our own regulatory proposals. In addition, the OCC will continue to work for interagency uniformity in banking regulations wherever possible.*

An attachment to this statement summarizing public comments received by the OCC on the Presidential Regulatory Initiative is omitted. Copies may be obtained from the Communications Division in Washington, D.C.

Remarks of Timothy M. Sullivan, Departmental Manager, International Banking and Finance Department, before a Price Waterhouse and Company program on the implications of the Foreign Bank Supervision Enforcement Act on foreign banks operating in the United States, New York, New York, April 24, 1992

I have been asked to discuss how the Foreign Bank Supervision Enhancement Act, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), will affect the supervision and examination of branches and agencies of foreign banks in the United States. In particular, I will address the practical impact the new legislation will have on how foreign banks operate in the United States.

As a representative of the Office of the Comptroller of the Currency (OCC), I cannot speak directly about the views or programs of the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), or the State of New York Banking Department. But I will discuss some of the general issues that are of common importance to all bank regulators in the United States.

As you know, the new legislation responded to certain regulatory and supervisory needs, including a need for:

- a more uniform approach to the establishment and termination of foreign bank offices in the U.S.;
- more comprehensive knowledge of the activities in all U.S. offices of a foreign bank;
- enhanced uniformity of activities permitted to foreign branches of foreign banks throughout the U.S.;
- more frequent examination: *annually* and, if possible, on a *simultaneous* basis for foreign banks with multiple offices in the U.S.;
- improved information about the relationships between foreign banks' U.S. offices, their offshore offices, and their head offices;
- enhanced assurance that foreign banks make all relevant information available to their U.S. supervisors;
- better assurance of reliable home country supervision (both consolidated and comprehensive), including obtaining the consent of home country supervisors to the establishment of new offices; and,
- a clear-cut mandate for the exchange of bank supervision information between U.S. and home country supervisors.

Today, I will deal only with the supervisory aspects of these needs. The legislation has general impact on all branches and agencies of foreign banks operating in the United States, whether state or federally licensed. It assures that *at least* two supervisory authorities will have important responsibilities for every foreign bank operating here. It will impact how foreign banks must relate to each of their supervisors. To put it succinctly: Foreign banks can expect stronger, more direct supervision. The supervision of foreign banks will be similar to the way in which U.S. banks, their competitors, are supervised. Direct supervision is also in keeping with the U.S.'s national treatment policy of foreign banks operating here. Despite this enhanced supervision, it is not the intention of U.S. regulators to supervise foreign banks so stringently as to restrict their ability to conduct a successful and profitable business in the United States, assuming that they operate in a safe and sound manner and in conformity with the law.

The new legislation also expanded the Federal Reserve Board's authority to become more directly involved in the supervision of all of the operations of foreign bank branches and agencies in the United States. The Board is now authorized to examine *any* foreign bank office or *any* of its affiliates, sometimes on a simultaneous basis, *without* any obligation to use, insofar as possible, examination reports of the OCC, the FDIC, or state regulators, as they had in the past. In principle, this authority could lead to a far larger examination burden on foreign banks, but we understand that the Board, in the majority of cases, will not duplicate the work that other regulators perform.

The Federal Reserve Board is also charged with coordinating examinations of foreign bank operations with other federal and state regulators and with planning and conducting simultaneous examinations of multi-office foreign banks. The legislation requires that each branch or agency receive an annual, on-site examination, but does not specify *by whom* the examination is to be conducted. The Federal Reserve believes that in its role as coordinator, it is responsible for assuring that the annual examination is conducted. So, examinations may be performed by the foreign bank's principal regulator, the state, or the OCC, either alone or jointly

with the Federal Reserve or by the Federal Reserve alone if necessary. Also, we expect that the Federal Reserve annually will select several multi-office foreign bank groups for simultaneous examinations of their entire operations throughout the United States, with various federal and state regulators participating, as appropriate.

All of the regulators expect to devote additional resources to the supervision of foreign banks in the future. You have probably read about the Federal Reserve's recent efforts to hire large numbers of additional examiners here in New York. The OCC's Northeastern District plans to allocate approximately four times the work-time that was used during 1991 for the supervision of Federal branches here in New York in 1992. These additional resources are needed primarily because of the statutory requirement for *annual, on-site* examinations.

We expect that most of these examinations will be comprehensive in scope, covering all significant aspects of the operations of the branches. Many of you may be used to more limited examinations, which targeted specific areas of examiner interest, or you may have experienced only off-site supervision, with infrequent examiner visits to your offices. At least in the immediate future, however, relatively complete, on-site examinations of your entire operations will now be the norm. Also, you can expect that ongoing supervision of branch activities, through reporting to and periodic contact by examiners, will continue so that your progress correcting matters of concern identified during an examination can be monitored.

The basic question that probably interests all of you is: "What can I now expect the examiners to be concerned about?" The answer is really no different now than it would have been prior to the new legislation. Examiners are *risk-oriented*. They are still concerned that foreign bank management, both head office and local, have developed and implemented systems, policies, and procedures to understand, control, and manage the business risks that are part of the business of banking in each particular market that they serve. This is no different than their approach to supervising domestic U.S. banks.

Examiners also can be expected to take a keener interest in the financial and managerial strength of the total foreign bank, as well as its U.S. operations, since the success of the U.S. branches are ultimately dependent on the overall support provided by the bank itself. You should expect increased examiner interest in the support that the foreign bank's head office is able to and actually does provide to its U.S. operations. Examiners expect head office support involving not only financial matters, they also want to see that operating and internal control policies, guidelines, and procedures and appropriate levels of audit supervision of branches are provided. Finally, examiners expect head offices regularly to monitor the activities of their U.S. branches through comprehensive reporting systems, and to take ultimate responsibility for managing asset and operational risk to assure that their U.S. branches are operated safely and soundly.

I will now discuss how examiners evaluate the local operations of foreign branches. For several years now, federal regulators have used a three-factor system to evaluate the condition of branches and agencies of foreign banks. Those primary factors are: asset quality, internal controls, and management. Referred to as the "AIM" system, the ratings of these three factors become the basis for the overall rating on the condition of the branch or agency.

When rating asset quality, examiners take into account the following:

- the level, distribution, and severity of classified assets to total loans and net assets, including transfer risk as determined by the Interagency Country Exposure Risk Committee's country risk criticisms and classifications;
- the level and composition of non-accruals and reduced-rate assets;
- the presence of any undue concentration of credits or investments to a particular borrower, industry, or country;
- the adequacy of lending policies and credit administration procedures;
- the adequacy of credit information and loan documentation in the branch; and,
- the adequacy and effectiveness of the branch loan review process.

The internal controls of the branches are rated by evaluating:

- the adequacy of operating procedures and internal controls, over all of the branch's operations, including lending, trading, and funding,
- adherence to established procedures and systems,

- the adequacy of an internal audit provided locally, by head office, or a combination of both;

- the adequacy of an external audit;

- the severity of existing internal control and audit deficiencies; and,

- management's response to and efforts toward correcting existing deficiencies.

Examiners also evaluate branch management, probably the most important factor to assure the safe and sound operations of the branch. Examiners consider the following when evaluating management:

- technical competence, leadership, and administrative abilities;

- *compliance* with all banking laws and regulations.

- adequacy of and compliance with internal policies and procedures;

- quality of support and supervision by the head office.

- quality of reports communicated to the head office.

- other factors which may be controlled by management that can be of significance to the branch or agency's overall condition, including branch liquidity, funding, earnings, capital markets and off-balance sheet activities, and the budgeting process; and,

- management's efforts and willingness to correct problems identified by the examiners or others.

Section 212 of the new legislation also provides the federal bank supervisors with responsibility to enforce foreign bank compliance with consumer-oriented statutes. This will inevitably mean more attention to consumer compliance issues in future examinations. Your compliance officers and legal counsel should review the requirements of all applicable statutes to be sure that you know how they may affect you and what systems and procedures you may need to have in place to assure adequate compliance. Insured branches should also be cognizant of the requirements of the Community Reinvestment Act. The probability of specific examiner attention to compliance matters in upcoming examinations is significant.

Regulators have also recently become more interested in the quality of assets booked in foreign bank branches that are located in offshore banking centers but which are managed by a U.S. office of the foreign bank. Using the records and documentation on these offshore branches that are maintained in the U.S. branch, both Federal Reserve Board and OCC examiners have begun reviewing the quality of these assets as a regular part of recent examinations. We believe that the quality of these assets and a knowledge of the composition and quality of the managed offshore branch's balance sheet, when considered in conjunction with the quality of assets booked at the U.S. branch under examination, gives us a better overall view of the lending, loan portfolio, and general management skills of U.S. branch management. It also enhances the ability of examiners to make an informed judgment about the existing and prospective condition of the U.S. branch operation.

Examiners may also review the role of the U.S. branch in the funding of the offshore books, from an asset-liability management point of view, and its impact on the U.S. branch operations. However, I know of little reason why examiners would have an interest in individual depositor accounts in offshore center branches. Although I realize that including the managed offshore center branches in the examination is controversial among some bankers, federal regulators nevertheless believe it is necessary to adequately judge branch management's overall activities and abilities.

This brief overview, I hope, has given you a general idea of how U.S. bank examiners supervise U.S. branches of foreign banks. Although some examiners may use a top-down, functional analysis of the branch's activities, while others may rely on a more traditional approach of reviewing and analyzing individual transactions or combine both approaches, all examiners will eventually make a judgment as to the quality of the branch's assets, its internal controls, and its management, as well as compliance with laws and regulations. They will come to an overall conclusion about the condition of the branch and may recommend changes or corrective actions to improve the branch's operations.

In conclusion, both bankers and regulators are affected by the new provisions in FDICIA. New duties and responsibilities for both groups have been created. Bankers need to work closely with their examiners to deal successfully with the demands of the new legislation and to assure a smooth transition to a new era in the supervision of foreign bank offices in the United States. Finally, both bankers and examiners need to remember that "we're all in this together" and cooperate in implementing this legislation.

Statement of Susan F. Krause, Senior Deputy Comptroller for Bank Supervision Policy, before the House Banking Subcommittee on Housing and Community Development and the Subcommittee on Consumer Affairs and Coinage, on home mortgage lending by national banks, Washington, D.C., May 14, 1992

Introduction

Chairman Gonzalez, Chairman Torres, and members of the subcommittees, I welcome this opportunity to appear before you today on behalf of the Office of the Comptroller of the Currency (OCC) to discuss a matter of great public concern. Data released last October on home mortgage lending by financial institutions show a significantly higher denial rate for home mortgage applications from blacks and Hispanics than those from whites. Although the reasons for those disparities are unclear, the disparities raise serious questions about the existence of possible discrimination in residential mortgage lending.

My testimony opens with the OCC's perspective about the nature and extent of possible racial and ethnic discrimination in residential mortgage lending. This subject merits searching and serious inquiry, and that is what we have attempted. Throughout my statement, I make distinctions between overt and subtle discrimination, isolated and systematic discrimination, and discrimination before and after application. These distinctions are not merely academic, for the different forms of possible discrimination have differing implications for investigative and regulatory strategies.

With that background established, my testimony offers the OCC's interpretation of the disparities in loan denial rates revealed by the data collected under the Home Mortgage Disclosure Act (HMDA). Because only limited personal financial data are collected through HMDA, there is insufficient information about applicant qualifications for us to know *definitively* what produced the racial and ethnic disparities revealed in the HMDA data. The differences in denial rates could point to illegal discrimination, but they could also stem from differences in net worth, credit histories, and other applicant qualifications that appear to follow racial and ethnic lines.

My testimony then addresses the utility, for regulatory purposes, of the HMDA data. Our examiners use them in assessments of bank compliance with fair lending laws and evaluations of bank performance under the Community Reinvestment Act (CRA). The usefulness of the HMDA data in relation to identifying possible discrimination depends on the form of discrimination being discussed. The data's limitations in identifying some forms of lending discrimination, however, do not impair their utility for assessing the CRA performance of banks.

Finally, my testimony reviews the initiatives the OCC has taken to address the concerns raised by the lending disparities in the 1990 HMDA data. Our efforts to date include targeting banks for fair lending reviews, participating in a follow-up study that will attempt to establish the cause or causes of the disparities in loan denial rates, and issuing an OCC advisory letter calling for all national banks to undertake self-assessments of racial and ethnic disparities in their residential lending activities.

The Nature and Extent of Lending Discrimination

We believe that acts of illegal racial and ethnic discrimination occur in mortgage loan transactions, but the number of instances in which readily detectable discrimination occurs is small.

Lenders are not immune to the behaviors found broadly in society, and illegal discrimination has been widely documented in many aspects of commerce. For example, recent large scale "tests" in home rental and sales markets conducted by the U.S. Department of Housing and Urban Development (HUD) found high levels of disparate treatment on the basis of race and ethnicity. Although the role of lenders differs from that of home rental and sales agents and there are different incentives influencing lenders, it is reasonable to assume that the same attitudes, assumptions, and impulses may affect lending decisions to some degree.

Detailed accounts of specific, recent loan denials we obtained from fair lending advocates whom we contacted provide documentation of what appears to be racial discrimination in those transactions. Although those episodes have not been adjudicated, the evidence suggests that the most plausible explanation for the disputed lending decisions was race. The practices were egregious enough to have aroused the customers' suspicions and prompted them to seek assistance.

However, the episodes we learned about were *isolated*. No other body of information — for example, rulings or settlements by federal and state civil rights enforcement agencies — indicates that *overt* or *systematic*

lending discrimination which is likely to be *detectable* in examinations is common

Discrimination and the HMDA Data

The HMDA Reporting Process

The Federal Reserve Board's Regulation C implements the Home Mortgage Disclosure Act of 1975. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) made a number of significant amendments to HMDA. These changes were reflected in amendments to Regulation C that took effect on January 1, 1990.

The regulation now requires depository and non-depository financial institutions that have over $10 million in assets and have offices in metropolitan statistical areas (MSAs) to disclose annually their originations and purchases of mortgage and home improvement loans, as well as applications they have received for such loans. In addition to information about the type and disposition of the loan, the key information to be reported is the location of the property and the gender, racial, ethnic, and income attributes of the applicants.

Data must be recorded on a Loan/Application Register (LAR) that reporting institutions must send to their regulatory agency by March 1 following the calendar year during which the data are collected. The Federal Financial Institutions Examination Council (FFIEC) compiles the HMDA data for each institution. Using census data, the FFIEC also identifies the racial, ethnic, and income characteristics of the neighborhood in which a property is located.

After compiling the data, the FFIEC issues annual disclosure statements to each reporting institution. Within 30 days after receiving those statements from the FFIEC, institutions must make them available to the public for inspection and copying at their home office and in at least one branch office in each MSA.

Racial and Ethnic Disparities in Denial Rates

One intended purpose of HMDA, as stated in Regulation C, is "to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes." If a bank approved loans to white applicants but denied them to equally qualified minority applicants, that would constitute illegal discrimination. It would probably also produce a racial or ethnic disparity in loan denial rates. For that reason, racial and ethnic disparities in the HMDA data act as "red flags" for bank regulators.

The expanded HMDA data, available for the first time in October, did reveal wide disparities in the denial rates of home purchase and home improvement loan applications of blacks, Hispanics, and whites. For example, for conventional home purchase loans, the denial rate for white applicants was 14.4 percent, while for black and Hispanic applicants the rates were 33.9 and 21.4 percent, respectively.

Those loan denial rate disparities are open to radically different interpretations, however. They could, and to some extent probably do, point to discrimination; but there would also be a racial or ethnic disparity in denial rates if minority applicants failed more frequently than whites to meet credit standards to which all applicants were held. The HMDA data include no basis for determining whether applicants met such credit standards. Even the applicant's income as reported in HMDA does not permit computation of the debt ratios on which lenders, loan purchasers, and loan insurers rely.

There is other evidence that differences in household net worth, credit history, and income stability may well tend to follow racial and ethnic lines. For example, the *Atlanta Constitution* reported in its March 1992 follow-up series to its well-known 1988 series on racial patterns in mortgage lending that the median net worth of black families is less than 10 percent of that for white families. This means that black families tend to be less likely than white ones to satisfy lending requirements for down payments and closing costs.

Even more direct links between applicants' qualifications and the racial pattern in loan denials have recently been reported by the New York State Banking Department. After comparing hundreds of individual applications for mortgage loans from minorities and non-minorities at 10 savings banks, the department found that minority applicants more often had more than one documented basis for denial and exceeded maximum debt-to-income ratios by large amounts. In contrast, successful white applicants who exceeded the ratios did so by small amounts and usually had offsetting favorable characteristics that the minority applicants who were denied credit lacked.

Although racial and ethnic differences in economic factors related to creditworthiness may influence the denial rate disparities in the HMDA data, we are not persuaded that they fully explain those disparities. It is likely that racial and ethnic factors do operate to the disadvantage of minority applicants for residential mortgage loans.

Even if hostile intentions are absent, stereotypes that inaccurately attribute poor credit qualities to minorities

may make a discriminatory denial of credit appear to a loan officer to be a rational avoidance of risk. For example, a lender's expectation of finding a weak employment or credit history on the part of a minority applicant may appear to be sustained when defects are found that would not raise concern when evaluating a white applicant. It may even be the case that the loan officer sincerely wishes the apparent "facts" were otherwise so the loan could be made. Unfortunately, "facts" can become distorted when interpreted by reference to a stereotype. Such unintentional differential treatment may pose difficult detection problems.

The same holds true for another form of illegal differential treatment that may well coincide with behavior intended to be "businesslike." Tension and awkwardness often characterize encounters between racial groups, and may lead a loan officer to keep encounters with minority applicants brief and terse. The result may be that additional or explanatory information that would qualify the minority applicant never comes out — as it might in more relaxed conversations with non-minority applicants. This would constitute illegal differential treatment on the basis of race.

Deeper inquiries than the HMDA data can provide are needed into the underlying causes of the disparities in denial rates and the role in lending decisions of creditworthiness factors not reported under HMDA.

Loan Approval Rates

The denial rate disparities in the HMDA data challenge the notion that lenders are in full compliance with fair lending laws and regulations. However, the HMDA data also suggest that discrimination at the most conspicuous point in the transaction — when the lender approves or denies an application — is limited rather than pervasive.

The data show that loan approval is more than twice as common than loan denial both for minority applicants and for those from predominantly minority neighborhoods. For example, in 1990, 62 percent of all black and Hispanic applicants got mortgage loans, compared to 26 percent that were denied. Even for conventional loans to purchase homes in low-income, predominantly minority neighborhoods, the approval rate was 61 percent, as compared to 24 percent denied.

We do not make these observations to minimize the seriousness of discrimination, but to attempt to provide a sense of its possible dimensions. We believe that illegal discrimination exists, and we will continue to work toward its elimination from lending. The available evidence from the HMDA data, however, suggests that the result for a minority loan-seeker, or an applicant from a minority neighborhood, is far more often an approved loan than a denial letter.

Potential Pre-Application Screening

The treatment of an application is only one realm of possible discrimination. Another realm involves whether potential applicants receive differential treatment prior to filing an application.

The HMDA data show that nearly half of all national banks received no home loan applications from black creditseekers. Even fewer received applications from Hispanics. As with denial rate disparities, both legitimate and unlawful explanations for this situation are plausible. It may be that the banks in question serve overwhelmingly white, non-Hispanic communities. On the other hand, potential minority applicants may be being discouraged from applying, or selective marketing could be illegally directing banking services to only one racial or ethnic group. Because of the possibility that unlawful discrimination may be a cause of the pattern of low applications revealed in the HMDA data, this situation merits attention and inquiry.

For example, one recent study commissioned by an unnamed regional bank reported that discriminatory obstacles were found at the pre-application stage. Such obstacles could deter or discourage potential applicants from even filing an application. The study identified subtle, but consistent, differential treatment of white, black, and Hispanic credit "shoppers" at 50 of the bank's branches. Differences were found in the detail of explanations given by loan officers, the breadth of alternative loan products described, the length of waiting times for the interview, the length of processing time quoted, and the general vigor of the sales effort.

We need to know more about the methodology of that study before fully embracing its findings, but we are pleased that the industry is attempting to inform itself about possible pre-application screening. We expect that barriers that discourage minority applicants exist, and that they are more prevalent in the earliest dealings between lender and creditseeker, particularly prior to an application being filed. The developing relationship and familiarity between lender and customer as a lending transaction progresses would tend to overcome stereotypes and racially related unease and remove their influence from later stages of the transaction.

The OCC's Compliance Program for Fair Lending

The OCC's mission is to foster the safety and soundness of the national banking system, monitor and

promote compliance by the approximately 3,800 national banks with laws and regulations (including those prohibiting discrimination and calling for community reinvestment), and encourage competitiveness, integrity, and stability of financial services

The OCC accomplishes its mission through a field staff of 2,140 examiners distributed among six district offices, 21 field offices, and about 100 duty stations. Our examiners are trained to perform both commercial ("safety and soundness") examinations and compliance examinations. Concerns in recent years about the soundness of banks, however, have made it necessary for many examiners to work exclusively on commercial examinations for extended periods. In order to meet all of our obligations, we are currently in the process of hiring 300 additional examiners this year and plan to add as many as 300 more examiners in 1993.

OCC Compliance Activities

The bulk of the OCC's compliance supervision effort and resources is devoted to conducting compliance examinations. We also fulfill our compliance supervision responsibilities by making sure, through the use of banking issuances and advisories, that bank management is aware of its compliance responsibilities.

The compliance program area includes the fair lending and community reinvestment activities that are of interest to these subcommittees. In addition, it includes determining adherence to other consumer protection laws (such as the Truth in Lending Act), the Bank Secrecy Act, the laws governing bank securities dealer activities, and sound fiduciary principles and regulations in rendering trust services.

Fair Lending Laws

The Equal Credit Opportunity Act (ECOA) prohibits a creditor from discriminating on the basis of race, national origin, gender and other bases in any aspect of a credit transaction. It covers both residential and nonresidential credit transactions. The OCC is charged with enforcing ECOA for national banks and for federal branches and agencies of foreign banks. The OCC uses its administrative enforcement authority to require corrective action for violations of ECOA.

The Fair Housing Act (FHA) provides explicit statutory protection against residential lending discrimination. It prohibits racial, ethnic, gender, and other forms of discrimination in loans secured by residential real estate, as well as in related activities such as appraisals.

The FHA specifically provides a number of forms of relief for discrimination victims and sanctions for violators, but it does not authorize the OCC to impose those sanctions or provide that relief. Enforcement authority under the FHA resides primarily with HUD. The OCC has procedures for informing HUD and the Department of Justice (DOJ) of possible violations. Additionally, the OCC has the authority to address FHA violations through its general administrative enforcement powers to require a bank to correct any violation of law.

Examining for Discrimination

Under the OCC's compliance program, all national banks with assets of more than $1 billion are examined biennially. These banks account for about 80 percent of all national bank assets. A sample of the remaining, smaller national banks is examined each year.

Our examination procedures are very similar to those of the other financial regulatory agencies. The emphasis of our examination approach is to evaluate a bank's policies, procedures, and internal control systems for their effectiveness in ensuring compliance with laws and regulations.

In every compliance examination, an examiner reviews the adequacy of bank management's policies, procedures, and internal control systems to ensure compliance with laws and regulations. The examiner then tests those systems by reviewing a sufficient number of individual loan files, applications, and transactions to confirm that bank employees are adhering to bank policy and procedure, and thereby complying with applicable laws and regulations. This represents the minimum review needed to determine the adequacy of a bank's compliance systems.

When an examiner identifies compliance system weaknesses, significant violations, control deficiencies, or other supervisory concerns, he or she then reviews additional, specific loan files, rejected and withdrawn applications and other transactions.

Every OCC compliance examination includes a fair lending component with approximately 40 specified steps, many of which entail a half-dozen inquiries or analyses. These procedures are designed primarily to detect discriminatory advertising or marketing, an overtly discriminatory policy, or a policy likely to have a discriminatory effect.

We believe the examiner's review of individual files and applications is likely to detect any *systematic* use of a *visible* double standard. Examples of such a visible double standard are notably stricter qualifying requirements for minorities or notably more onerous terms for loans actually made to members of minority groups. If

a bank routinely uses such a double standard, inconsistent results would be evident in many similar applications, with a good likelihood that the examiner's sample would include some of them. Such violations usually will have a basis in written policies and procedures and are likely to leave a "paper trail."

Certain other discriminatory conduct is difficult to detect through the review of individual loan files during an examination. A sophisticated statistical analysis usually is required to establish the existence of *subtle* differences in lending standards. A statistical analysis of applications, however, requires the data from numerous applications. According to the 1990 HMDA data, though, only 169 national banks had even 50 or more black applicants; and they had far fewer denials. Consequently, the opportunities to use statistical analysis to identify possible subtle disparate treatment are very limited.

Detection of *isolated* acts of discrimination can also be very difficult. Without eyewitnesses, isolated acts of discrimination are unlikely to be discovered because examiners do not and could not review every loan file during a routine examination. Detection would be especially difficult if the discrimination were to occur prior to application; such occurrences typically leave no written record to be reviewed by an examiner — or, for that matter, any investigator.

After thorough inquiries, we have learned of no enforcement agency, advocacy organization, or private litigant that has prevailed in recent years in adjudication of an enforcement action or complaint alleging racial discrimination in residential lending. This suggests both the rarity of instances of readily detectable discriminatory conduct and the extreme difficulty of identifying and documenting isolated or subtle discriminatory conduct.

Utility of HMDA Data

HMDA Statements and HMDA-LARs are reviewed in the fair lending portion of compliance examinations. Examiners are directed to look for concentrations of credit in certain areas, little or no lending activity in minority or racially mixed neighborhoods, and unusual patterns of rejections or withdrawals following racial or ethnic lines. In this way, the HMDA data help us focus our attempts to identify possible illegal pre-application screening and redlining. However, as I mentioned earlier, they have limited value in identifying specific discriminatory lending practices.

The deficiencies that limit the value of the HMDA data for identifying discrimination do not impair their utility for assessing the CRA performance of banks. Measuring bank performance under the CRA is a primary intended use of the HMDA data. In fact, Regulation C states that HMDA data are to be used to help determine whether financial institutions are serving the housing needs of their communities.

The CRA component of a compliance examination proceeds through approximately 50 steps set forth in the *Comptroller's Handbook for Compliance*. The steps prescribe data-gathering and analysis, including use of HMDA data, to evaluate the reasonableness of a lender's delineated community and the quality of a bank's efforts to determine credit needs in its delineated community, to develop a mix of products to meet those needs, and to market those products throughout its delineated community, including low- and moderate-income neighborhoods. The procedures also permit the examiner to determine how well the bank supports community development, as well as how its loans and operations are distributed geographically.

Promoting Compliance

The examiner's role in compliance examinations encompasses not only looking for possible violations but acting to foster compliance. Examiners understand that by identifying deficient controls or questionable practices in a bank, they can help the bank stay in compliance with fair lending and other laws. Such guidance is conveyed to managers and boards of directors during compliance examinations.

In addition, senior OCC district management, field national bank examiners, and Washington staff conduct frequent outreach meetings with bank customer groups, community and neighborhood development organizations, bankers, bank trade groups, universities, realtors, government officials, and fair housing groups. While these meetings cover many issues, a large number involve local fair lending and CRA issues. The number of meetings annually is approximately 600. Similarly, staff are often principal instructors at bank trade group schools and conferences.

We also complement our program of examinations with efforts to help banks develop effective programs to maintain their compliance with fair lending laws. To promote fair lending practices, for example, the OCC, in conjunction with the other members of the FFIEC, has prepared a booklet on home mortgage lending and equal treatment that has been distributed to field examiners and to all national banks and interested community organizations.

The booklet identifies policies, procedures, and underwriting standards that are not necessarily illegal, but

that financial institutions should avoid because they could lead to prohibited discrimination against mortgage applicants. We believe this initiative will result in financial institutions' performing self-assessments of their underwriting standards, appraisal policies, and marketing activities to ensure that no unlawful policies, procedures, or standards exist.

We also routinely provide banks with a variety of forms of guidance to help them comply with anti-discrimination statutes by our extensive use of banking issuances and advisories. Since 1989, the OCC has distributed to all national banks more than 20 banking issuances and advisories relating to fair lending, CRA, and HMDA.

OCC Responses to HMDA Data and Other Fair Lending Initiatives

To address concerns stemming from the differences in the denial rates of home mortgage applications of blacks, Hispanics, and whites, the OCC has taken a number of steps to enhance its ability to detect and combat illegal discrimination in lending markets.

Advisory Letter

The OCC has communicated to all national banks its concerns about the racial and ethnic disparities revealed by the 1990 HMDA data. In an Advisory Letter distributed in December 1991, we alerted bank managers to our supervisory concerns about the data and strongly recommended that they undertake a review of their institutions's adherence to fair lending laws and performance under the CRA.

The OCC advised bank managers that if disparities in the disposition of loan applications of different racial and ethnic groups exist, underwriting practices and decisionmaking processes should be reviewed to determine and document the reasons for such disparities. Bank managers were also asked to report their findings to the full board of directors and be prepared to document and discuss with our examiners and the public the reasons for any lending disparities that do exist.

Targeting Banks for Examination

In February 1992, following receipt in January of the final HMDA data tapes, the OCC identified institutions that exhibited lending patterns suggestive of possible discrimination. Factors we considered included very low numbers of applications from black or Hispanic creditseekers and substantially higher denial rates for black or Hispanic applicants. This information has been conveyed to our six district offices, which are now in the process of following up with the identified institutions.

HUMDA Follow-up Study

To attempt to learn more about the role played by certain applicant factors not collected through HMDA, we are participating with the other bank and thrift supervisors in a follow-up study that will secure more detail on specific loan denials reported in the 1990 HMDA data. The study is being carried out under the auspices of the Federal Reserve Bank of Boston and includes all lenders reporting data under HMDA that made at least 25 home purchase loans in the Boston MSA in 1990. For samples of loan applications from white, black, and Hispanic applicants, additional data will be gathered on selected factors, such as credit history, employment history, net worth, and down payment amount.

The project has multiple objectives. The research is primarily intended to explore explanations for the disparities in loan denial rates. If the additional research shows that applicants with similar qualifications experienced similar results, that finding would tend to show the absence of discrimination. If, by contrast, applicants with similar qualifications experienced dissimilar results, discrimination may be indicated. The project will also serve to explore the potential for expanding the HMDA-LAR on a permanent basis to include some or all of the items to be collected from Boston lenders.

Another objective is to identify specific loan applications with dispositions that are questionable. That information may help prioritize examinations and narrow their focus to individual loan applications. If evidence of discrimination were uncovered during such an examination and an institution were found in violation of ECOA or FHA, that lender should be subject to the range of enforcement actions applicable to those types of violations. Referrals would also be made to HUD or DOJ, as appropriate.

Examination Technique

The OCC is reviewing its existing fair lending examination procedures and training materials. We are also participating in a similar effort through the FFIEC, which will be undertaken by an independent party.

The purpose of these efforts is to determine whether modified or expanded examination procedures might be able to enlarge the realm of discriminatory behavior that can be uncovered in examinations. For example, expanding the number of files reviewed increases the likelihood of finding an isolated act of discrimination or discerning a subtle double standard. Because this would require substantially more time, expanded or modified techniques might most effectively be used for

situations where there is a specific suspicion of discrimination.

Review of Fair Lending Investigations

Even before the release of the HMDA data, we began to review the investigation and enforcement techniques of federal agencies and private organizations. We know of no agency or organization that has succeeded in recent years in proving lending discrimination in a legal forum. However, we do not want to overlook the emergence from any quarter of effective investigative and analytical methods to detect discrimination.

The OCC is tracking HUD's investigations involving lending discrimination and is seeking opportunities for joint investigations. We have maintained an equivalent level of contact with DOJ, and we also have participated in a working group of enforcement and financial regulatory agencies convened by DOJ. That group has exchanged ideas ranging from how to target institutions to techniques for detecting disparate treatment in specific aspects of loan transactions.

We are hopeful that specific lines of inquiry and analytical techniques developed during HUD's and DOJ's investigations may be suitable to incorporate into either routine compliance examinations or targeted fair lending examinations. Moreover, the agencies' investigative efforts may identify specific questionable practices about which we can educate the industry. We will continue to track such investigations.

Improvements in Complaint Processing

When an illegal act is isolated or occurs in a personal encounter between customer and lender, a complaint by the customer may be the only way for the possible violation to come to our attention. We are hopeful that improvements in our handling of complaints will increase the likelihood of detecting discrimination

The OCC and other FFIEC member agencies have negotiated a Memorandum of Understanding (MOU) with HUD to share information and cooperate in FHA complaint investigations. The MOU requires mutual notification of complaints received, coordination in processing of FHA complaints, sharing of certain records, and notification of final decisions regarding cases. This agreement will assist all of the FFIEC member agencies and HUD in processing FHA complaints and will facilitate determinations of possible violations of law. We have commenced implementing the MOU, even though it is not officially in effect at this time. We recently notified HUD of a residential lending discrimination complaint received, in accordance with the procedures stated in the MOU.

Conclusion

Differences in denial rates revealed by the 1990 HMDA data raise, rather than answer, questions about the extent of possible discrimination in residential mortgage lending. However, in raising the level of attention to the issue of lending discrimination, the HMDA data have served an important purpose.

In the few months since the HMDA data were released, the OCC has set in motion a number of initiatives to try to learn more about the extent of possible discrimination in lending, educate the industry about lending practices that may have discriminatory effects, and motivate lenders to assess and improve their own performance. We also remain open to new approaches and techniques that can enhance our ability to detect and combat discrimination. The OCC is committed to enforcing prohibitions against discrimination and will continue to work toward its elimination from lending.

Mergers — April 1 to June 30, 1992

Mergers consummated involving two or more operating banks.

Mergers consummated involving national banks and savings and loan associations.

A number of transactions in this section do not have an accompanying decision. In those cases the OCC reviewed the competitive effects of the proposals by using its standard procedures for determining whether the transaction has minimal or no adverse competitive effects. The OCC found the proposals satisfied its criteria for transactions that clearly had no or minimal adverse competitive effects.

FIRST COMMERCIAL BANK, NATIONAL ASSOCIATION,
Little Rock, Arkansas, and First Commercial Bank of Lonoke County, England, Arkansas

Names of institutions and type of transaction	*Total assets*
First Commercial Bank, National Association, Little Rock, Arkansas (13949), with	$1,233,696,000
and First Commercial Bank of Lonoke County, England, Arkansas, with	49,192,000
merged June 26, 1992, under charter and title of the former. The merged bank at date of merger had	1,282,888,000

* * *

BANK OF AMERICA, NATIONAL TRUST AND SAVINGS ASSOCIATION,
San Francisco, California, and Security Pacific National Bank, Los Angeles, California

Names of institutions and type of transaction	*Total assets*
Bank of America, National Trust and Savings Association, San Francisco, California (13044), with	$102,002,000,000
and Security Pacific National Bank, Los Angeles, California (2491), with	54,020,000,000
merged April 22, 1992, under charter and title of the former. The merged bank at date of merger had	157,103,000,000

* * *

COMMUNITY FIRST NATIONAL BANK,
Pleasanton, California, and The Bank of Pleasanton, Pleasanton, California

Names of institutions and type of transaction	*Total assets*
Community First National Bank, Pleasanton, California (21446), with	$101,563,000
and The Bank of Pleasanton, Pleasanton, California, with	68,370,000
merged May 18, 1992, under charter and title of the former. The merged bank at date of merger had	169,933,000

* * *

MARINE NATIONAL BANK,
Irvine, California, and American Interstate Bank, Newport Beach, California

Names of institutions and type of transaction	*Total assets*
Marine National Bank, Irvine, California (17052), with	$87,057,000
and American Interstate Bank, Newport Beach, California, with	—
merged June 12, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST INTERSTATE BANK OF GOLDEN, NATIONAL ASSOCIATION,
Golden, Colorado, and First Interstate Bank of Arvada, National Association, Arvada, Colorado

Names of institutions and type of transaction	*Total assets*
First Interstate Bank of Golden, National Association, Golden, Colorado (14384), with	$186,024,000
and First Interstate Bank of Arvada, National Association, Arvada, Colorado (18535), with	16,091,000
merged April 1, 1992, under charter and title of the former. The merged bank at date of merger had	202,062,000

* * *

Real mergers include the merger, consolidation or purchase and assumption of operating banks or savings and loan associations or branches of operating banks or savings and loan associations where the resultant bank is a national bank.

UNITED BANK OF NORTHGLENN, NATIONAL ASSOCIATION,
Northglenn, Colorado, and United Bank of Westminster, National Association, Westminster, Colorado

Names of institutions and type of transaction	*Total assets*
United Bank of Northglenn, National Association, Northglenn, Colorado (15203), with	$81,880,000
and United Bank of Westminster, National Association, Westminster, Colorado (21828), with	21,129,000
merged April 27, 1992, under charter and title of the former. The merged bank at date of merger had	103,009,000

* * *

UNITED BANK OF DENVER, NATIONAL ASSOCIATION,
Denver, Colorado, and United Bank of Skyline, National Association, Denver, Colorado

Names of institutions and type of transaction	*Total assets*
United Bank of Denver, National Association, Denver, Colorado (3269), with	$2,430,718,000
and United Bank of Skyline, National Association, Denver, Colorado (16102), with	44,542,000
merged April 27, 1992, under charter and title of the former. The merged bank at date of merger had	2,472,848,000

* * *

THE FIRST NATIONAL BANK OF WRAY,
Wray, Colorado, and Security National Bank, Holyoke, Colorado

Names of institutions and type of transaction	*Total assets*
The First National Bank of Wray, Wray, Colorado (8752), with	$66,495,000
and Security National Bank, Holyoke, Colorado (20633), with	13,277,000
merged April 30, 1992, under charter and title of the former. The merged bank at date of merger had	79,772,000

* * *

AFFILIATED NATIONAL BANK,
Denver, Colorado, and Affiliated National Bank-Alameda, Lakewood, Colorado, and Affiliated National Bank-Englewood, Englewood, Colorado, and Affiliated National Bank-University Hills, Denver, Colorado, and Affiliated National Bank-Lakeside, Wheat Ridge, Colorado, and Affiliated National Bank-Westminster, Westminster, Colorado, and Affiliated National Bank-Littleton, Littleton, Colorado

Names of institutions and type of transaction	*Total assets*
Affiliated National Bank, Denver, Colorado (15184), with	$172,587,000
and Affiliated National Bank-Almeda, Lakewood, Colorado (15014), with	65,166,000
and Affiliated National Bank-Englewood, Englewood, Colorado (9907), with	180,224,000
and Affiliated National Bank-University Hills, Denver, Colorado (15791), with	257,393,000
and Affiliated National Bank-Lakeside, Wheat Ridge, Colorado (14862), with	162,464,000
and Affiliated National Bank-Westminster, Westminster, Colorado (14947), with	149,184,000
and Affiliated National Bank-Littleton, Littleton, Colorado (11949), with	118,533,000
merged May 7, 1992, under charter 15184 and title "Affiliated National Bank-Colorado." The merged bank at date of merger had	1,105,551,000

* * *

THE CHASE MANHATTAN BANK OF CONNECTICUT, NATIONAL ASSOCIATION,
Bridgeport, Connecticut, and Fairfield County Trust Company, Stamford, Connecticut

Names of institutions and type of transaction	*Total assets*
The Chase Manhattan Bank of Connecticut, National Association, Bridgeport, Connecticut (22478), with	$2,186,869,000
and Fairfield County Trust Company, Stamford, Connecticut, with	—
merged April 9, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

ASSOCIATES NATIONAL BANK (DELAWARE),
Wilmington, Delaware, and Associates National Bank, Pleasanton, Delaware

Names of institutions and type of transaction	*Total assets*
Associates National Bank (Delaware), Wilmington, Delaware (22277), with	$407,519,000
and Associates National Bank, Pleasanton, Delaware (16645) with	25,849,000
merged June 30, 1992, under charter and title of the former. The merged bank at date of merger had	164,052,000

* * *

CREDIT INTERNATIONAL BANK, NATIONAL ASSOCIATION, Washington, D.C., and Federal City National Bank, Washington, D.C.

Names of institutions and type of transaction	*Total assets*
Credit International Bank, National Association, Washington, D.C. (21392), with	$38,675,000
and Federal City National Bank, Washington, D.C. (18599), with	22,040,000
merged April 27, 1992, under charter and title of the former. The merged bank at date of merger had	60,715,000

* * *

COMPTROLLER'S DECISION

On January 28, 1992, application was made to the Office of the Comptroller of the Currency (OCC), pursuant to the Bank Merger Act, 12 U.S.C. 1828(c), for prior authorization for Credit International Bank, National Association, Washington, D.C., (CIB), to merge with the Federal City National Bank, Washington, D.C. (FCNB), under the charter and title of CIB. The application is based on an agreement finalized between the proponents on January 14, 1992.

CIB is a wholly owned subsidiary of Credit International Bancshares, Ltd., a one-bank holding company, and is a full-service bank. CIB does not have fiduciary powers. On December 31, 1991, CIB had total assets of $38.5 million, total deposits of $32.2 million, and operated only one office located at 2475 M Street N.W. in Washington, D.C. On the same date, FCNB had total assets of $22 million and total deposits of $20 million. FCNB operates one office and does not have fiduciary powers.

The relevant geographic market for this proposal is Washington, D.C. The OCC has reviewed the competitive effects of this proposal using its standard procedures for determining whether a merger clearly has minimal or no adverse competitive effects. The OCC finds that the proposal satisfies its criteria for a merger that clearly has no or minimal adverse competitive effects.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served." We find that the financial and managerial resources of FCNB are in less than satisfactory condition with FCNB in imminent danger of failing. The resources at CIB are sufficient to absorb FCNB and do not raise concerns that would cause the application to be disapproved. The future prospects of the resulting institutiion are considered to be favorable, as are the effects of the proposal on the convenience and needs of the communities to be served.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities has revealed evidence that CIB's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, is less than satisfactory. While the "Joint Statement on the Community Reinvestment Act" (Banking Bulletin 89-12) provides that commitments are not to be viewed as part of an applicant's record of improvement, the joint statement provides that commitments may be given weight as an indicator of potential improvement in CRA performance in the context of the acquisition of a troubled institution. A conditional approval based on demonstrated improvement in compliance with CRA is not workable in this situation because of the insolvent condition of the target bank, FCNB, and therefore, an exception to policy is granted.

We have analyzed this proposal pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) and find that it will not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal do not outweigh the benefits to the merging depository institutions or the public. Accordingly, the application is approved subject to conditions communicated to the proponents in a separate correspondence.

March 12, 1992

SUMMARY REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

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ADAMS NATIONAL BANK
Washington, D.C., and Metropolitan Bank, National Association, Washington, D.C.

Names of institutions and type of transaction	*Total assets*
Adams National Bank, Washington, D.C. (16720), with	$67,466,000
and Metropolitan Bank, National Association, Washington, D.C. (16220), with	27,090,000
merged May 1, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

SUN FIRST NATIONAL BANK OF POLK COUNTY,
Winter Haven, Florida, and Sun Bank/South Central Florida, National Association, Sebring, Florida

Names of institutions and type of transaction	*Total assets*
Sun First National Bank of Polk County, Winter Park, Florida (16786), with	$585,173,000
and Sun Bank South Central Florida, National Association, Sebring, Florida (8728), with	197,450,000
merged May 22, 1992, under charter 16786 and title "Sunbank/Mid Florida, National Association." The merged bank at date of merger had	782,623,000

* * *

SOUTHTRUST BANK OF ATLANTA, NATIONAL ASSOCIATION,
Atlanta, Georgia, and Southtrust Bank of Georgia, National Association, Atlanta, Georgia

Names of institutions and type of transaction	*Total assets*
Southtrust Bank of Atlanta, National Association, Atlanta, Georgia (22520), with	$1,013,813,000
and Southtrust Bank of Georgia, National Association, Atlanta, Georgia (22411), with	815,841,000
merged May 29, 1992, under charter and title of the former. The merged bank at date of merger had	1,829,654,000

* * *

THE FIRST NATIONAL BANK OF HARALSON COUNTY,
Buchanan, Georgia, and Commercial Bank, Tallapoosa, Georgia

Names of institutions and type of transaction	*Total assets*
The First National Bank of Haralson County, Buchanan, Georgia (16567), with	$68,518,000
and Commercial Bank, Tallapoosa, Georgia, with	25,619,000
merged June 12, 1992, under charter and title of the former. The merged bank at date of merger had	94,137,000

* * *

COMPTROLLER'S DECISION

On March 26, 1992, application was made to the Office of the Comptroller of the Currency (OCC), pursuant to the Bank Merger Act, 12 U.S.C. 1828(c), for prior authorization to merge Commercial Bank, Tallapoosa, Georgia, (Commercial), into The First National Bank of Haralson County, Buchanan, Georgia, (First National). The application is based on an agreement finalized between the proponents on November 25, 1992.

As of December 31, 1991, First National had total assets of approximately $68 million, total deposits of $63 million, and operated one office in Buchanan and two offices in Bremen, Georgia. On the same date Commercial had total assets of approximately $26 million, total deposits of $23 million, and operated three offices in Tallapoosa and one office in Waco, Georgia.

The relevant geographic market for this proposal is the area including and immediately surrounding the community of Tallapoosa, from which Commercial derives the bulk of its deposits. This is a rural area with a population of approximately 9,000. In light of the population, the OCC considers such a small demographic area to be *de minimis* from a competitive standpoint. (See Decision of the Comptroller of the Currency on the application to merge The National Bank and Trust Company of Norwich, Norwich, New York, with National Bank of Oxford, Oxford, New York, dated April 8, 1983.)

Therefore, because the market is not recognized as being economically significant, any anticompetitive effects resulting from the transaction are considered *de minimis*.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served." We find that the financial and managerial resources of both institutions do not raise concerns that would cause the application to be

disapproved. The future prospects of the resulting institution are considered favorable, as are the effects of the proposal on the convenience and needs of the community to be served.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that either bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, is less than satisfactory.

We have analyzed this proposal pursuant to the Banker Merger Act, 12 U.S.C. 1828(c), and find that it will not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

May 8, 1992

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

* * *

SECURITY PACIFIC BANK IDAHO, NATIONAL ASSOCIATION, Coeur d'Alene, Idaho, and Bank of America Idaho, Coeur d'Alene, Idaho

Names of institutions and type of transaction	*Total assets*
Security Pacific Bank Idaho, National Association, Coeur d'Alene, Idaho (22398), with	$349,536,000
and Bank of America Idaho, Coeur d'Alene, Idaho, with	152,592,000
merged April 22, 1992, under charter 22398 and title "Bank of America Idaho, National Association." The merged bank at date of merger had	515,659,000

* * *

NBD BANK ELGIN, NATIONAL ASSOCIATION, Elgin, Illinois, and The Larkin Bank, Hoffman Estates, Illinois

Names of institutions and type of transaction	*Total assets*
NBD Bank Elgin, National Association, Elgin, Illinois (1365), with	$510,673,000
and The Larkin Bank, Hoffman Estates, Illinois, with	125,574,000
merged April 1, 1992, under charter and title of the former. The merged bank at date of merger had	636,184,000

* * *

FIRST NATIONAL BANK OF EVERGREEN PARK, Evergreen Park, Illinois, and Oak Lawn Trust & Savings Bank, Oak Lawn, Illinois

Names of institutions and type of transaction	*Total assets*
First National Bank of Evergreen Park, Evergreen Park, Illinois (14618), with	$1,375,011,000
and Oak Lawn Trust & Savings Bank, Oak Lawn, Illinois, with	133,976,000
merged April 6, 1992, under charter and title of the former. The merged bank at date of merger had	1,495,954,000

* * *

THE FIRST NATIONAL BANK OF CHICAGO, Chicago, Illinois, and First Chicago Bank of Evanston, National Association, Evanston, Illinois

Names of institutions and type of transaction	*Total assets*
The First National Bank of Chicago, Chicago, Illinois (8), with	$34,878,682,000
and First Chicago Bank of Evanston, National Association, Evanston, Illinois (14943), with	72,488,000
merged April 25, 1992, under charter and title of the former. The merged bank at date of merger had	34,951 143,000

* * *

FIRST NATIONAL BANK, MATTOON,
Mattoon, Illinois, and Cumberland County National Bank in Neoga, Neoga, Illinois, and Charleston Community Bank, Charleston, Illinois, and The State Bank of Sullivan, Sullivan, Illinois, and The First National Bank and Trust Company of Douglas County, Tuscola, Illinois

Names of institutions and type of transaction	*Total assets*
First National Bank, Mattoon, Mattoon, Illinois (10045), with	$159,771,000
and Cumberland County National Bank in Neoga, Neoga, Illinois (13892), with	18,417,000
and Charleston Community Bank, Charleston, Illinois, with	23,611,000
and State Bank of Sullivan, Sullivan, Illinois, with	38,927,000
and The First National Bank and Trust Company of Douglas County, Tuscola, Illinois (17170), with	30,224,000
merged May 29, 1992, under charter 10045 and title "First Mid-Illinois Bank & Trust, National Association." The merged bank at date of merger had	265,235,000

* * *

NBD BANK MOUNT PROSPECT, NATIONAL ASSOCIATION,
Mount Prospect, Illinois, and Countryside Bank, Mount Prospect, Illinois

Names of institutions and type of transaction	*Total assets*
NBD Bank Mount Prospect, National Association, Mount Prospect, Illinois (15272), with	$388,490,000
and Countryside Bank, Mount Prospect, Illinois, with	118,483,000
merged June 1, 1992, under charter and title of the former. The merged bank at date of merger had	506,925,000

* * *

THE FIRST NATIONAL BANK OF CHICAGO,
Chicago, Illinois, and First Chicago Bank of Mount Prospect, Mount Prospect, Illinois, and First Chicago Bank of Oak Park, Oak Park, Illinois

Names of institutions and type of transaction	*Total assets*
The First National Bank of Chicago, Chicago, Illinois (8), with	$32,549,321,000
and First Chicago Bank of Mount Prospect, Mount Prospect, Illinois, with	466,919,000
and First Chicago Bank of Oak Park, Oak Park, Illinois, with	387,568,000
merged June 20, 1992, under charter 8 and title "The First National Bank of Chicago." The merged bank at date of merger had	33,882,449,000

* * *

THE FIRST NATIONAL BANK OF CHICAGO,
Chicago, Illinois, and First Chicago Bank of Ravenswood, Chicago, Illinois

Names of institutions and type of transaction	*Total assets*
The First National Bank of Chicago, Chicago, Illinois (8), with	$32,549,321,000
and First Chicago Bank of Ravenswood, Chicago, Illinois, with	440,153,000
merged June 20, 1992, under charter and title of the former. The merged bank at date of merger had	33,882,449,000

* * *

FIRST OF AMERICA BANK-LAPORTE, NATIONAL ASSOCIATION,
Laporte, Indiana, and First of America Bank-Rensselaer, Rensselaer, Indiana

Names of institutions and type of transaction	*Total assets*
First of America Bank-Laporte, National Association, Laporte, Indiana (377), with	$184,744,000
and First of America Bank-Rensselaer, Rensselaer, Indiana, with	74,761,000
merged May 1, 1992, under charter 377 and title "First of America Bank-Northwest Indiana, National Association." The merged bank at date of merger had	259,505,000

* * *

FIRST NATIONAL BANK AND TRUST,
Salina, Kansas, and The First State Bank & Trust Company, Osborne, Kansas

Names of institutions and type of transaction	Total assets
First National Bank and Trust, Salina, Kansas (4742), with	$294,127,000
and The First State Bank & Trust Company, Osborne, Kansas, with	17,054,000
merged April 1, 1992, under charter and title of the former. The merged bank at date of merger had	309,749,000

* * *

COMPTROLLER'S DECISION

On December 3, 1991, First National Bank and Trust, Salina, Kansas (First Salina) filled an applicaiton to merge with The First State Bank and Trust Company, Osborne, Kansas (First State). The application is a result of a written agreement executed by the banks on November 5, 1991.

As of June 30, 1992, First Salina, a wholly owned subsidiary of Sunflower Banks, Inc., Salina, Kansas, operated eight banking offices in the state of Kansas with total deposits of $240 million. On the same date, First State, a wholly owned subsidiary of Osborne Bancshares, Inc., Osborne, Kansas, operated only one office with total deposits of $14 million.

The relevant geographic market for this proposal is the area including and immediately surrounding the community of Osborne. This is the area where First State, the target bank, operates and derives the bulk of its deposits. The community of Osborne and the county have populations of approximately 2,100 and 5,600, respectively. In light of the small population, the OCC considers such a small demographic area to be *de minimis* from a competitive standpoint. (See Decision of the Comptroller on the application to merge The Naitonal Bank and Trust Company of Norwich, Norwich, New York, with National Bank of Oxford, Oxford, New York, dated April 8, 1983).

Of the six banks competing in this market, First State and First Salina rank fourth and fifth with 16 and 14 percent of the local deposits, respectively. After consummation of the proposed transaction, First Salina would become the largest depository with a 30 percent of the market share. While the proposed merger would eliminate some competition, any adverse effects would be mitigated by the presence of four other banking alternatives.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prosepcts of the existing and proposed institutions and the convenience and needs of the communities to be served." We find that the financial and managerial resources of First Salina and First State do not raise concerns that would cause the application to be disapproved. The future prospects of the proponents, individually and combined, are considered favorable and the resulting bank is expected to meet the convenience and needs of the community to be served.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

We have reviewed this proposal pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) and find that it does not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

February 6, 1992

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

* * *

FIRST NATIONAL BANK AND TRUST,
Salina, Kansas, and The Thomas County National Bank of Colby, Colby, Kansas

Names of institutions and type of transaction	Total assets
First National Bank and Trust, Salina, Kansas (4742), with	$292,541,000
and The Thomas County National Bank of Colby, Colby, Kansas (13076), with	57,016,000
merged April 1, 1992, under charter and title of the former. The merged bank at date of merger had	345,268,000

* * *

STAR BANK, NATIONAL ASSOCIATION, KENTUCKY,
Covington, Kentucky, and Kentucky National Bank of Carroll County, Lebanon, Kentucky, and Kentucky National Bank of Marion County, Lebanon, Kentucky, and Kentucky National Bank of Pendleton County, Falmouth, Kentucky

Names of institutions and type of transaction	Total assets
Star Bank, National Association, Kentucky, Covington, Kentucky (718), with	$707,345,000
and Kentucky National Bank of Carroll County, Lebanon, Kentucky (21302), with	34,988,000
and Kentucky National Bank of Marion County, Lebanon, Kentucky (2150), with	58,785,000
and Kentucky National Bank of Pendleton County, Falmouth, Kentucky (718), with	707,345,000
merged May 9, 1992, under charter 718 and title "Star Bank National Association, Kentucky." The merged bank at date of merger had	828,167,000

* * *

NATIONSBANK OF MARYLAND, NATIONAL ASSOCIATION,
Bethesda, Maryland, and NCNB National Bank of Maryland, Baltimore, Maryland

Names of institutions and type of transaction	Total assets
NationsBank of Maryland, National Association, Bethesda, Maryland (22546), with	$4,132,000,000
and NCNB National Bank of Maryland, Baltimore, Maryland (21977), with	323,000,000
merged April 24, 1992, under charter and title of the former. The merged bank at date of merger had	4,455,000,000

* * *

THE FIRST NATIONAL BANK OF BOSTON,
Boston, Massachusetts, and Workingmens Cooperative Bank, Boston, Massachusetts

Names of institutions and type of transaction	Total assets
The First National Bank of Boston, Boston, Massachusetts (200), with	$24,620,128,000
and Workingmens Cooperative Bank, Boston, Massachusetts, with	—
merged May 29, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST OF AMERICA BANK-SOUTHEAST MICHIGAN, NATIONAL ASSOCIATION,
Detroit, Michigan, and Security Bank Northeast, Richmond, Michigan, and Security Bank St. Clair Shores, St. Clair Shores, Michigan, and Security Bank of Commerce, Hamtramck, Michigan

Names of institutions and type of transaction	Total assets
First of America Bank-Southeast Michigan, National Association, Detroit, Michigan (14925), with	$2,954,666,000
and Security Bank Northeast, Richmond, Michigan, with	174,140,000
and Security Bank St. Clair Shores, St. Clair Shores, Michigan, with	113,791,000
merged June 1, 1992, under charter 14925 and title "First of America Bank-Southeast Michigan, National Association." The merged bank at date of merger had	3,821,414,000

* * *

THE FIRST NATIONAL BANK OF BAGLEY,
Bagley, Minnesota, and Farmers State Bank of Fosston, Fosston, Minnesota

Names of institutions and type of transaction	Total assets
The First National Bank of Bagley, Bagley, Minnesota (6813), with	$27,494,000
and Farmers State Bank of Fosston, Fosston, Minnesota, with	25,043,000
merged May 23, 1992, under charter and title of the former. The merged bank at date of merger had	51,076,000

* * *

BOATMEN'S NATIONAL BANK OF CAPE GIRARDEAU,
Cape Girardeau, Missouri, and Jackson Exchange Bank and Trust Company, Jackson, Missouri

Names of institutions and type of transaction	*Total assets*
Boatmen's National Bank of Cape Girardeau, Cape Girardeau, Missouri (4611), with	$331 506 000
and Jackson Exchange Bank and Trust Company, Jackson, Missouri, with	—
merged May 7, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

COMMERCE BANK OF POPLAR BLUFF, NATIONAL ASSOCIATION,
Poplar Bluff, Missouri, and First Exchange Bank of Cape Girardeau, Cape Girardeau, Missouri

Names of institutions and type of transaction	*Total assets*
Commerce Bank of Poplar Bluff, National Association, Poplar Bluff, Missouri (20913), with	$120,901,000
and First Exchange Bank of Cape Girardeau, Cape Girardeau, Missouri, with	—
merged May 7, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

COMMERCE BANK OF ST. FRANCOIS COUNTY, NATIONAL ASSOCIATION,
Farmington, Missouri, and First Exchange Bank of Madison County, Fredericktown, Missouri

Names of institutions and type of transaction	*Total assets*
Commerce Bank of St. Francois County, National Association, Farmington, Missouri (20917), with	$87,264,000
and First Exchange Bank of Madison County, Fredericktown, Missouri, with	—
merged May 7, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

MERCANTILE BANK OF ST. LOUIS, NATIONAL ASSOCIATION,
St. Louis, Missouri, and American Bank of St. Louis, St. Louis, Missouri

Names of institutions and type of transaction	*Total assets*
Mercantile Bank of St. Louis, National Association, St. Louis, Missouri (21684), with	$4,712,151,000
and American Bank of St. Louis, St. Louis, Missouri, with	152,517,000
merged June 18, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST NATIONAL BANK OF CHADRON,
Chadron, Nebraska, and Northwestern State Bank, Hay Springs, Nebraska

Names of institutions and type of transaction	*Total assets*
First National Bank of Chadron, Chadron, Missouri (14637), with	$39,233,000
and Northwestern State Bank, Hay Springs, Nebraska, with	24,610,000
merged May 1, 1992, under charter and title of the former. The merged bank at date of merger had	64,831,000

* * *

VALLEY NATIONAL BANK,
Passaic, New Jersey, and Powder Mill Bank, Morris Plains, New Jersey

Names of institutions and type of transaction	*Total assets*
Valley National Bank, Passaic, New Jersey (15790), with	—
and Powder Mill Bank, Morris Plains, New Jersey, with	—
merged May 22, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST FIDELITY BANK, NATIONAL ASSOCIATION, NEW YORK
New York, New York, and American Savings Bank, White Plains, New York

Names of institutions and type of transaction	*Total assets*
First Fidelity Bank, National Association, New York, New York, New York (22558), with	—
and American Savings Bank, White Plains, New York, with	—
merged June 12, 1992, under charter and title of the former The merged bank at date merger had	—

* * *

REPUBLIC NATIONAL BANK OF NEW YORK,
New York, New York, and American Savings Bank, White Plains, New York

Names of institutions and type of transaction	Total assets
Republic National Bank of New York, New York, New York (15569), with	$25,925,888,000
and American Savings Bank, White Plains, New York, with	—
merged June 12, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

BANK ONE, CINCINNATI, NATIONAL ASSOCIATION,
Mulford, Ohio, and Bank One, Middletown, Middletown, Ohio

Names of institutions and type of transaction	Total assets
Bank One, Cincinnati, National Association, Milford, Ohio (3234), with	$713,401,000
and Bank One, Middletown, Middletown, Ohio, with	214,659,000
merged May 23, 1992, under charter and title of the former. The merged bank at date of merger had	928,060,000

* * *

STAR BANK, NATIONAL ASSOCIATION,
Cincinnati, Ohio, and Star Bank, National Association, Cleveland, Independence, Ohio

Names of institutions and type of transaction	Total assets
Star Bank, National Association, Cincinnati, Ohio (24), with	$3,878,325,000
and Star Bank, National Association, Cleveland, Independence, Ohio (21780), with	79,149,000
merged June 19, 1992, under charter and title of the former. The merged bank at date of merger had	3,930,096,000

* * *

BOATMEN'S FIRST NATIONAL BANK OF OKLAHOMA,
Oklahoma City, Oklahoma, and Founders Bank & Trust Company, Oklahoma City, Oklahoma

Names of institutions and type of transaction	Total assets
Boatmen's First National Bank of Oklahoma, Oklahoma City, Oklahoma (21296), with	$904,326,000
and Founders Bank & Trust Company, Oklahoma City, Oklahoma, with	338,569,000
merged May 1, 1992, under charter and title of the former. The merged bank at date of merger had	1,242,011,000

* * *

THE FIRST NATIONAL BANK OF LAKE ARIEL,
Lake Ariel, Pennsylvania, and The Pocono Bank, Milford, Pennsylvania

Names of institutions and type of transaction	Total assets
The First National Bank of Lake Ariel, Lake Ariel, Pennsylvania (9886), with	$103,094,000
and The Pocono Bank, Milford, Pennsylvania, with	19,547,000
merged April 24, 1992, under charter and title of the former. The merged bank at date of merger had	121,418,000

* * *

THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA,
Charleston, South Carolina, and NationsBank Trust Company (South Carolina), National Association, Columbia, South Carolina, and NCNB National Bank of South Carolina, Columbia, South Carolina

Names of institutions and type of transaction	Total assets
The Citizens and Southern National Bank of South Carolina, Charleston, South Carolina (14425), with	$3,807,000,000
and NationsBank Trust Company (South Carolina), National Association, Columbia, South Carolina (21257), with	50,000,000
and NCNB National Bank of South Carolina, Columbia, South Carolina (21975), with	4,993,000,000
merged June 15, 1992, under charter 14425 and title "NationsBank of South Carolina, National Association." The merged bank at date of merger had	8,850,000,000

* * *

THE FIRST NATIONAL BANK OF AMARILLO,
Amarillo, Texas, and First State Bank, Dumas, Texas

Names of institutions and type of transaction	*Total assets*
The First National Bank of Amarillo, Amarillo, Texas (4214), with	$728,606,000
and First State Bank, Dumas, Texas, with	68,442,000
merged May 29, 1992, under charter and title of the former. The merged bank at date of merger had	789,671,000

* * *

BANCTEXAS HOUSTON, NATIONAL ASSOCIATION,
Houston, Texas, and BancTEXAS McKinney, National Association, McKinney, Texas

Names of institutions and type of transaction	*Total assets*
BancTEXAS Houston, National Association, Houston, Texas (18172), with	$146,802,000
and BancTEXAS McKinney, National Association, McKinney, Texas (14236), with	90,981,000
merged May 31, 1992, under charter 14236 and title "BancTEXAS National Association." The merged bank at date of merger had	237,439,000

* * *

RALEIGH COUNTY NATIONAL BANK,
Beckley, West Virginia, and Gulf National Bank, Sophia, West Virginia

Names of institutions and type of transaction	*Total assets*
Raleigh County National Bank, Beckley, West Virginia (16002), with	$216,012,000
and Gulf National Bank, Sophia, West Virginia (16524), with	28,820,000
merged June 2, 1992, under charter and title of the former. The merged bank at date of merger had	244,729,000

* * *

THE FIRST NATIONAL BANK OF PORTAGE,
Portage, Wisconsin, and Peoples State Bank, Pittsville, Wisconsin

Names of institutions and type of transaction	*Total assets*
The First National Bank of Portage, Portage, Wisconsin (4234), with	$108,300,000
and Peoples State Bank, Pittsville, Wisconsin, with	33,454,000
merged April 1, 1992, under charter and title of the former. The merged bank at date of merger had	137,735,000

* * *

FIRST UNION NATIONAL BANK OF FLORIDA,
Jacksonville, Florida, and Security First Federal Savings and Loan Association, Daytona Beach, Florida

Names of institutions and type of transaction	*Total assets*
First Union National Bank of Florida, Jacksonville, Florida (17695), with	$28,393,440,000
and Security First Federal Savings and Loan Association, Daytona Beach, Florida, with	—
merged April 10, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

NORTH GEORGIA NATIONAL BANK,
Woodstock, Georgia, and First Federal Savings Bank, F.S.B., Atlanta, Georgia

Names of institutions and type of transaction	*Total assets*
North Georgia National Bank, Woodstock, Georgia (21919), with	$32,215,000
and First Federal Savings Bank, F.S.B., Atlanta, Georgia, with	—
merged April 3, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

COMMUNITY NATIONAL BANK,
Ashburn, Georgia, and First Federal Savings Bank, F.S.B., Ashburn, Georgia

Names of institutions and type of transaction	Total assets
Community National Bank, Ashburn, Georgia (22035), with	$41,976,000
and First Federal Savings Bank, F.S.B., Ashburn, Georgia, with	—
merged April 3, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

SOUTHERN NATIONAL BANK OF NORTH CAROLINA,
Lumberton, North Carolina, and First Security Savings & Loan Association, Inc., Pinehurst, North Carolina

Names of institutions and type of transaction	Total assets
Southern National Bank of North Carolina, Lumberton, North Carolina (10610), with	$3,528,410,000
and First Security Savings & Loan Association, Inc., Pinehurst, North Carolina, with	—
merged May 22, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF PANHANDLE,
Panhandle, Texas, and New Merabank Texas, Federal Savings Bank, El Paso, Texas

Names of institutions and type of transaction	Total assets
The First National Bank of Panhandle, Panhandle, Texas (13070), with	$45,250,000
and New Merabank Texas, Federal Savings Bank, El Paso, Texas, with	—
merged April 3, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST WESTERN NATIONAL BANK,
Carrollton, Texas, and New Merabank Texas, Federal Savings Bank, El Paso, Texas

Names of institutions and type of transaction	Total assets
First Western National Bank, Carrollton, Texas (17516), with	$154,128,000
and New Merabank Texas, Federal Savings Bank, El Paso, Texas, with	—
merged April 3, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

BANK OF AMERICA TEXAS, NATIONAL ASSOCIATION,
Houston, Texas, and Sunbelt Federal Savings, Federal Savings Bank, Irving, Texas

Names of institutions and type of transaction	Total assets
Bank of America Texas, National Association, Houston, Texas (22429), with	$730,809,000
and Sunbelt Federal Savings, Federal Savings Bank, Irving, Texas, with	—
merged April 10, 1992, under charter and title of the former. The merged bank at date of merger had	—

* * *

Interpretations — April 1 to June 30, 1992

Page

575—June 10, 1991

This is in response to your letters of February 8, 1990, and May 7, 1990, to the Legal Advisory Services Division, requesting interpretive advice for the resolution of two issues that have arisen under Interpretive Ruling (I.R.) 7.3025. First, you inquire whether principal and interest payments of principal payments only are included in satisfying the 10 percent cash payment requirement of I.R. 7.3025(b). Second, you ask whether the pledge of certificates of deposit, government bonds, or other forms of cash equivalents would be acceptable in calculating the 10 percent cash payment requirement.

The language of the Interpretive Ruling does not provide any clear guidance on these issues. Accordingly, as you have noted, one method used by the Office of the Comptroller of the Currency (OCC) in resolving questions arising under the I.R. has been to look to generally accepted accounting principles for direction. You inquire whether the drafters of I.R. 7.3025 contemplated such an application of these principles.

Interpretive Ruling 7.3025

Preamble

Interpretive Ruling 7.3025 sets forth the methods national banks must use to account for real property they own (OREO), other than property used or reasonably expected to be used as banking premises. 44 *Fed. Reg.* 46428 (August 8, 1979); *see also* 12 CFR 7.3025. According to the preamble, the primary purpose of the ruling was to harmonize the accounting methods of national banks with generally accepted accounting standards, insofar as the standards related to OREO property.

See 44 *Fed. Reg.* 46428-46431.

Prior to adoption of this ruling, the OCC had experienced some problems in providing guidance to national banks on the proper accounting treatment for troubled real estate loans and sales of property received due to defaults on these loans. Interpretive Letter No. 259, (June 2, 1983), *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,423. As a result, the OCC decided,"There must be standards for determining whether a bank has, in fact, meaningfully disposed of other real estate owned." 44 *Fed. Reg.* 46429.

In developing these guidelines, the OCC reviewed generally accepted accounting standards and bank supervisory concerns in order to design an interpretive ruling which would help banks in accounting for real property acquired by foreclosures or otherwise as a result of a troubled debt restructuring. The present section 7.3025 is the result of that effort. I R 7.3025 was intended to reflect the generally accepted accounting principles on this issue as embodied in an industry accounting guide, "Accounting for Profit Recognition on Sales of Real Estate," (Am. Inst. of Certified Pub. Accountants 1973) (AICPA Guide). The standards in this publication serve as the foundation of the interpretive ruling. *See* Interpretive Letter No. 259, *supra*.

Section 7.3025(b): Covered Transactions

Interpretive Ruling 7.3025(b) defines "covered transactions" as:

> [S]ales of other real estate owned where less than 10 percent of the total sales price is in cash; where there is financing by the bank of all or a portion of the sales price on terms more favorable than those customarily required by the bank where its only involvement is as lender; or where the transaction does not transfer from the bank to the buyer the usual risks of ownership and all or most of the rewards of ownership.

12 CFR 7.3025(b).

The purpose of defining a covered transaction is to establish when a sale is made on easier terms than those required by the bank in the ordinary course of its lending business. If a bank engages in a covered transaction, it must account for the receivable — *i.e.* the debt obligation resulting from the sale — in the same manner as assets known as "other real estate owned." 44 *Fed. Reg.* 46429. Since all other real estate owned must be sold by the bank within the time specified in 12 U.S.C. 29 (currently 5 years with up to a maximum 5 year extension), the effect of regarding an asset as OREO property is to subject the bank to (1) time limits on its disposition and (2) rules related to investment in assets held for sale rather than operating assets for its accounting treatment. Because banks may abuse covered transactions in an attempt to evade statutory time limitations or improperly defer recognition of losses, the OCC believes they should be accorded specialized treatment. *Id.*

A transaction ceases to be covered, however, when the conditions of preferential treatment in the sale of the property no longer exist, or when the bank has received

10 percent of the sales price of the property in cash. 12 CFR 7.3025(b). The ruling further provides that

> it will be deemed that 10 percent of the sales price has been paid in cash when the consideration received by the bank in cash, together with that portion of the sales price guaranteed to the bank by private mortgage insurance or an equivalent guarantee, equals or exceeds 10 percent of the total sales price.

Id.

Once a bank has received the required 10 percent of the total sales price, it may transfer the property from the category of OREO and reclassify the transaction on its books as a loan. *See* 12 CFR 7.3025(i). In adding the amounts of subsequent payments to the cash received at closing for purposes of meeting the 10 percent requirement, a substantial difference results when principal payments are the sole method used to add to the buyer's investment, instead of adding payments comprised of both interest and principal. If principal payments only are used, recovery of 10 percent of the original sales price takes much longer.

Use of Accounting Standards

One of the underlying rationales for promulgating I.R. 7.3025 was to include covered transactions as options for the sale of other real estate owned, so that banks would have choices other than foreclosing upon property and/or holding it for resale to recover on defaulted loans. 44 *Fed. Reg.* 46429. The AICPA Guide addresses the subject of profit recognition in resales of property held by a bank.

> Revenue (and profit) is conventionally recognized at the time an asset is sold, provided (a) . . . the collectibility of the sales price is reasonably assured - and (b) . . . the seller is not obliged to perform significant activities after the sale in order to earn the revenue.

AICPA Guide, *supra*, section 7.

The basis of these requirements is to ensure that certain economic actions take place before OREO or any real estate can be regarded as having been "meaningfully disposed of" for accounting purposes. *Id.* A key factor in determining collectibility of the sales price in a real estate sale is the size of the buyer's initial investment. The I.R. incorporates the theory of collectibility of the sales price by requiring a 10 percent down payment to remove the property from the OREO account. 12 CFR 7.3025(b).

Private Mortgage Insurance or Equivalent Guarantees

A limited exception to the cash down payment requirement of I.R. 7.3025(b) is permitted in the form of private mortgage insurance or an "equivalent guarantee." The OCC has previously considered the question of what qualifies as an equivalent guarantee, and the only item thus far that has met the test is a letter of credit issued by an independent established lending institution. *See* letter from Peter Liebesman, July 2, 1986, (unpublished); *see also* letter from Katherine A. Bleakney, April 21, 1989, (unpublished) (certificates of deposit are not equivalent guarantees); letter from William B. Glidden, January 9, 1990, (unpublished) (the pledge of gold coins was found not to be an equivalent guarantee). These opinions are in accord with generally accepted accounting principles.

Moreover, the inclusion of private mortgage insurance or an equivalent guarantee as an exception to the 10 percent cash down payment requirement was not contemplated in the first amendment of section 7.3025. *See* 43 *Fed. Reg.* 2881 (January 20, 1978). Rather, it was added in response to a comment letter received on the proposed amendment which suggested that the requirement was inconsistent with the OCC's general approach to loan-to-value ratios under 12 U.S.C. 371. *See* 44 *Fed. Reg.* 46428, 46429-30. Regulations promulgated under the statute at that time (former 12 CFR 7.200 and former 12 CFR 7.2145(c) held that private mortgage insurance or an equivalent guarantee would take the portion of a loan that was subject to the insurance or guarantee out of the category of real estate loan, thereby effectively increasing the maximum permissible loan-to-value ratio. *Id.* at 46429. The OCC agreed with the comment and modified the ruling.

In 1982, however, the Garn-St Germain Depository Institutions Act, Pub. L. 97-320, Section 403, amended 12 U.S.C. 371 by removing the statutory restrictions on real estate lending by national banks. Subsequently, the OCC regulations pertaining to these restrictions were removed. The changes in 12 U.S.C. 371 and the removal of sections 7.2000 and 7.2145(c) make the exceptions to the cash down payment requirement less meaningful than they once were, and serve as an additional reason why the OCC should follow generally accepted accounting principles in interpreting the definition of an "equivalent guarantee."

FASB Statement Number 66

Methods of Profit Recognition

FASB statements are designed by the Financial Accounting Standards Board to establish standards

prescribing accounting procedures or disclosure practices for particular items or events. Accounting Standards, Original Pronouncements, Financial Accounting Standards Board 22207 (1984). FASB 66 was issued in October 1982 to formalize the specialized profit recognition principles found in the AICPA Guide. *Id.*

Appendix B of FASB 66 describes several allowable ways to recognize profit on real estate sales. The following methods clearly indicate that both principal and interest should be included as part of the buyer's investment in the property.

> Cost Recovery Method
>
> Paragraph 62. Under the cost recovery method, no profit is recognized until cash payments by the buyer, including principal and interest on debt due to the seller and on existing debt assumed by the buyer, exceed the seller's cost of the property sold.

Id. at 4553 (emphasis added).

> Deposit Method
>
> Paragraph 65. Cash received from the buyer, including the initial investment and subsequent collections of principal and interest, is reported as a deposit on the contract . . .

Id. (emphasis added).

In addition, paragraph 12 of FASB 66 also appears to support the conclusion that interest payments should be used to determine the size of the buyer's initial investment.

> The buyer's continuing investment in a real estate transaction shall not qualify (for recognition of profit) unless the buyer is contractually required to pay each year on its total debt for the purchase price of the property an amount at least equal to the level annual payment that would be needed to pay that debt and interest on the unpaid balance over no more than (a) 20 years for debt for land and (b) the customary amortization term of a first mortgage loan by an independent established lending institution for other real estate.

Id. at 4535 (emphasis added).

Cash Down Payment Requirement

To support the contention that the pledge of instruments such as certificates of deposit, government bonds, or other forms of cash equivalents do not meet the 10 percent cash payment requirement, paragraph 9 of FASB 66 provides some insight:

> The buyer's initial investment shall include only (a) cash paid as a downpayment, (b) the buyer's notes supported by irrevocable letters of credit from an independent established lending institution,[1] (c) payments by the buyer to third parties to reduce existing indebtedness on the property, and (d) other amounts paid by the buyer that are part of the sales value.[2] Other consideration received by the seller, including other notes of the buyer, shall be included as part of the buyer's initial investment only when that consideration is sold or otherwise converted to cash without recourse to the seller.

Accounting Standards, *supra*, at 4534 (emphasis added).

The I.R. is silent on the issue of cash equivalents. The AICPA Guide, however, in discussing a buyer's investment in purchased property, expressly provides:

> Cash equivalency . . . can clearly be established, however, by (a) a sale of the note . . . or (b) the buyer obtaining an irrevocable letter of credit for the amount of the note from an established lending institution. Unless its cash equivalency is thus established, a receivable supported by the full faith and credit of the buyer or other consideration is to be considered for the purposes of this guide to be the same as a receivable in which a seller has right of recourse only to the property sold.

AICPA Guide, *supra*, section 15.

Under accounting standards, then, the pledge of instruments such as certificates of deposits or government bonds would not be sufficient evidence to demonstrate the buyer's commitment to pay for the property and, therefore, would not be counted as part of the 10 percent cash requirement needed to remove a real estate transaction from a bank's OREO account.

Conclusion

After conducting a review of OCC precedent, the history of the Interpretive Ruling, and generally accepted accounting practices, I have concluded that accounting principles should be used as guidelines in interpreting ambiguities found in I.R. 7.3025. It appears likely that the drafters of the ruling intended FASB 66 and its

[1]An "independent established lending institution" is an unrelated institution such as a commercial bank unaffiliated with the seller.
[2]These nominally may be management fees, points, or prepaid interest or fees that are required to be maintained in an advance status and applied against the amounts due to the seller at a later date. Accounting Standards, *supra* at 4534 (FASB 66, paragraph 7a).

predecessor to be controlling in resolving questions arising under the I.R. because the stated purpose of the ruling was to harmonize the accounting methods used by national banks in reporting transactions involving other real estate owned with generally accepted accounting principles. In addition, following these guidelines will minimize discrepancies and abuse that might arise in determining when to remove OREO property from the OREO account on a bank's books.

Although a narrow exception to the 10 percent cash down payment requirement exists, OCC precedent has generally adhered to the accounting principles in limiting the instruments which can be used in lieu of cash. Therefore, to maintain consistency with current accounting practices, interest payments are included in satisfying the 10 percent cash payment requirement of the I.R., and the pledge of certificates of deposit, government bonds, and forms of cash equivalents other than a letter of credit from an independent established lending institution are not acceptable in calculating the 10 percent cash down payment requirement of 7.3025(b).

Please note, however, that the use of FASB Statements to establish standards prescribing accounting practices applicable to national banks is under review by this office. Therefore, this view is based on current policy and may be revised as future developments warrant.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

576—March 27, 1992

I am writing in response to your recent inquiry concerning the interrelationship between other real estate owned (OREO) and real estate that must be accounted for as OREO because of an in substance foreclosure (ISF). The problem you have identified is confusion over the application of 12 CFR 7.3025, the OCC's OREO regulation, to property classified as ISF. This letter contains (i) an explanation of OREO; (ii) an explanation of ISF, (iii) a review of current Office of the Comptroller of the Currency (OCC) Law Department positions on the issues you have raised; and (iv) some concluding comments.

Other Real Estate Owned

In general, national banks may only own real estate for certain purposes. By statute

[a] national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

> First. Such as shall be necessary for its accommodation in the transaction of its business.
>
> Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.
>
> Third. Such as shall be conveyed to it in satisfaction of debts previously contracted.
>
> Fourth. Such as it shall purchase at sales under judgements, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years except as otherwise provided in this section.

For real estate in the possession of a national banking association upon application by the association, the Comptroller of the Currency may approve the possession of any such real estate by such association for a period longer than five years, but not to exceed an additional five years, if (1) the association has made a good faith attempt to dispose of the real estate within the five-year period, or (2) disposal within the five-year period would be detrimental to the association. Upon notification by the association to the Comptroller of the Currency that such conditions exist that require the expenditure of funds for the development and improvement of such real estate, and subject to such conditions and limitations as the Comptroller of the Currency shall prescribe, the association may expend such funds as are needed to enable it to recover its total investment.

12 U.S.C. 29.

According to case law,

> [t]he object of these restrictions was obviously threefold. It was to keep the capital of the banks flowing in the daily channels of commerce; to deter them from embarking in hazardous real estate speculations; and to prevent the accumulation of large masses of such property in their hands, to be held, as it were, in mortmain

Union National Bank v. Matthews, 98 U.S. 621, 626 (1879).

The OCC has issued a number of regulations interpreting 12 U.S.C. 29. One of these regulations is Interpretive Ruling 7.3025, 12 CFR 7.3025, which prescribes the procedures for the proper handling and disposition of a bank's OREO in accordance with 12 U.S.C. 29. OREO is defined — in pertinent part — in this regulation as real estate acquired by a bank in any of the following three ways:

> (i) Through purchases at sales under judgments, decrees, or mortgages where the property was security for debts previously contracted;
>
> (ii) Through conveyance in satisfaction of debts previously contracted; or,
>
> (iii) Through purchases to secure debts previously contracted; . . . .

12 CFR 7.3025(a)(1). Twelve U.S.C. 29 contains four categories of real estate that a bank may own. However, 12 CFR 7.3025(a)(1) lists only three of these categories as being OREO. This is because the first category of real estate in 12 U.S.C. 29, real estate necessary for the bank's accommodation in the transaction of its business, is not considered to be OREO as long as the bank is using this real estate. However, such real estate does become OREO — subject to all of the requirements of 12 CFR 7.3025 — when it becomes real estate for which banking use is no longer contemplated. 12 CFR 7.3025(a)(2).

In Substance Foreclosure

When certain conditions exist, generally accepted accounting principles indicate that the reporting of an asset on a creditor's books should change from that of a loan receivable to that of an other asset.[1] If a creditor determines that these conditions are present, the creditor cannot avoid recognition of a loss by simply not foreclosing upon the collateral. The creditor must account for the collateral securing a loan on his balance sheet as if that collateral has been formally foreclosed upon or repossessed. This accounting event is called an in substance foreclosure or ISF. The conditions that trigger the ISF accounting treatment are as follows:

(1) The borrower has little or no equity in the collateral, considering its current fair value;[2] and,

(2) Repayment of the loan is expected only from the operation or sale of the collateral; and,

(3) The borrower has either:

   (a) abandoned control of the collateral; or,

   (b) retained control of the collateral, but it is doubtful the borrower can regain equity in the collateral or repay the loan in the foreseeable future because of the borrower's current financial condition, or the economic prospects for the borrower and/or the collateral.

See FAS 15; FRR No. 28; and AICPA PB No. 7.

For a national bank, if collateral is declared ISF by the bank or by its examiners, the reporting of the asset on the bank's Consolidated Report of Condition and Income (call report) should change from that of a loan receivable to either OREO or, in the case of personal property, other assets. *See Comptroller's Handbook for National Bank Examiners*, section 213.1 (March 1990). The bank should report the collateral securing the loan at the lesser of the fair value of the collateral or the recorded investment value in the loan.[3] The bank would then charge any resulting loss to the allowance for loan and lease losses.

Review of Current Law Department Positions

It is the current position of the Law Department that at the point the collateral is declared ISF, it is regarded as OREO for accounting purposes (Accounting OREO), but it is not regarded as OREO for legal purposes (Legal OREO). The collateral does not become Legal OREO until it is acquired by the bank in one of the three ways listed in 12 CFR 7.3025(a)(1). From a legal perspective, the collateral remains security for a loan

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[1] Accounting by Debtors and Creditors for Troubled Debt Restructurings, Statement of Financial Accounting Standards No. 15, (Fin. Accounting Standards Bd. 1977) (FAS 15); Accounting for Loan Losses by Registrants Engaged in Lending Activities, Securities Act Release No. 6679, Exchange Act Release No. 23854, 6 Fed. Sec. L. Rep. (CCH) ¶ 72,428 (December 1, 1986) (FRR No. 28); Criteria for Determining Whether Collateral for a Loan Has Been In Substance Foreclosed, Practice Bulletin No. 7, (Am. Inst. of Certified Public Accountants 1990) (AICPA PB No. 7).

[2] *Fair value* of the assets transferred is the amount that the debtor could reasonably expect to receive for them in a current sale between a willing buyer and a willing seller, that is, other than in a forced or liquidation sale. *See* FAS 15, paragraph 13.

[3] The *recorded* investment value *in the loan* is the loan balance plus or minus any remaining net deferred costs or loan fees and plus or minus any unamortized premium or discount. The loan balance should be net of any previous charge off. If there is any recorded accrued interest, it should be included in the recorded investment value in the loan. *See* FAS 15, paragraph 28 n.17.

The dual character of property under these circumstances has generated the confusion you have identified. The kinds of issues that you have raised concern ISF as it relates to the holding period, advancement of funds, the notification requirement, appraisals, and violations. Below is a review of current Law Department positions on these issues.

Holding Period

Twelve U.S.C. 29 requires that a bank divest itself of Legal OREO within five years of acquiring the property, unless an additional five year period is granted by the OCC. The OCC's regulations interpreting this statutory requirement state that "[t]he holding period of 12 U.S.C. 29 begins on the date that legal title to the property is transferred to the bank . . . ." 12 CFR 7.3025(e).

In contrast, the OCC has concluded that the holding period does not apply to Accounting OREO since the bank does not have legal title to this property. *See* letter of William Glidden, Assistant Director, Legal Advisory Services Division (July 26, 1990) (unpublished).

Advancement of Funds

If collateral is Legal OREO and

> is an unfinished construction or development project, further prudent advances to complete the project may be included in other real estate owned. However, such advances may not be capitalized unless the bank maintains evidence that the advances will result in a more salable property and are recoverable.

12 CFR 7.3025(j). In addition, a bank may pay off encumbrances on Legal OREO, provided that the bank's interest therein is sufficient to justify such action. 12 CFR 7.3020(b). A bank may also pay legal fees and direct costs of acquiring title to such property. 12 CFR 7.3025(g).

Furthermore, once a bank has acquired property, it may — pursuant to its incidental power to salvage a debt — expend additional funds to operate an "establishment whose value depends substantially on uninterrupted operation."[4] *Atherton v. Anderson*, 86 F.2d 518, 525 (6th Cir. 1936), *rev'd on other grounds*, 302 U.S. 643 (1937). Expenditures such as these do not constitute loans to a borrower subject to the lending limit of 12 U.S.C. 84 because they are considered funds spent by a bank on its own property.

However, if the collateral is Accounting OREO, a bank may only advance funds to the extent that the lending limit in 12 U.S.C. 84 permits. Where the bank has not acquired the property in any of the three ways listed in 12 CFR 7.3025(a)(1), the general rule is that advances of funds — including advances to protect the value of a bank's collateral — are considered loans to the borrower subject to the lending limit. *See Federal Deposit Insurance Corporation v. Mapp's Executor*, 37 S.E.2d 23 (Va. 1946) (purchase of a judgment lien to protect the bank's collateral held to be an additional loan to the borrower where title to the realty did not pass to the bank). Any "new advance of funds under the loan contract would simply be a disbursement of loan proceeds subject to the lending limit in 12 U.S.C. 84."[5] Letter of William Glidden, Assistant Director, Legal Advisory Services Division (July 26, 1990) (unpublished).

Although in an ISF the accounting treatment of the collateral reflects foreclosure by the bank, the bank actually still has a secured loan to its borrower for legal purposes. Thus, the lending limit of 12 U.S.C. 84 and the regulations thereunder at 12 CFR 32 apply to any disbursement of funds in connection with Accounting OREO.

In contrast to this analysis and the various OCC precedents outlined above, one OCC letter indicates that a bank may advance funds in excess of its lending limit for payment of certain items — such as delinquent or current taxes, repairs, or liens — while the bank is pursuing foreclosure. *See* letter of October 8, 1986, (unpublished). In view of the previous discussion, the legal authority for the position taken in the October 8, 1986, letter is unclear. Thus, reliance on this position would be unwarranted.

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[4] [illegible] *reprinted in* [1978-1979 [illegible]] ¶ 85,087 (December 7, [illegible]) [illegible] necessary to preserve going [illegible] letter from [illegible] (March 3, 1977) (unpublished) [illegible] a theater, a bowling alley [illegible] and a motel that [illegible]

[5] *See also* OCC Interpretive Letter No. 557, *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 83,307 (August 8, 1991) (payment by bank of operating expenses on a resort property would be loan to borrower where bank had not instituted foreclosure proceedings and did not intend to do so); letter of Stephen R. Steinbrink, Director of Regional Banks, Southwestern District (November 8, 1989) (unpublished) (payments for the purpose of satisfying taxes, insurance premiums, prior liens and other adverse claims to protect the value of the collateral are subject to the lending limit, whereas such payments in connection with property upon which the bank has already foreclosed are not considered loans to the borrower); letter of Thomas G. DeShazo, Deputy Comptroller of the Currency (June 19, 1975) (unpublished) (where a bank purchases prior liens without acquiring title to the property, the funds expended will be considered an extension of credit subject to the lending limit).

Notification Requirement

Twelve U.S.C. 29 permits a bank to expend funds on Legal OREO when

> such conditions exist that require the expenditure of funds for the development and improvement of such real estate . . . as are needed to enable such association to recover its total investment.

Twelve U.S.C. 29 requires the bank to notify the OCC prior to expending these funds. In practice, the OCC does not require this notification if the expenditures are simply for the maintenance of the property. However, the OCC does require this notification under certain circumstances prior to a bank's expending any funds for development or improvement of Legal OREO. *See* Examining Bulletin 80-14 (August 20, 1980). If required, the notification is reviewed by the appropriate supervisory office and, provided an adequate showing is made by the bank, permission is granted.

In contrast, this notification requirement does not apply to Accounting OREO. The notification requirement applies only to Legal OREO, which is property acquired by the bank in any of the three listed ways in 12 CFR 7.3025(a)(1). Since Accounting OREO is not acquired by the bank in any of the listed ways, the notification requirement does not apply when funds are disbursed in connection with this property. These disbursements would merely be disbursements of loan proceeds subject, as discussed above, to the lending limit of 12 U.S.C. 84.

Appraisals

When property becomes Legal OREO, its "fair value must be substantiated by a current appraisal prepared by an independent, qualified appraiser." 12 CFR 7.3025(g)(1). In acquiring Legal OREO, the bank is engaging in a "real estate-related" and "federally related" transaction.[6] Thus, the appraisal must meet the requirements of 12 CFR 34, Subpart C, the OCC's real estate appraisal regulation. *See, generally,* 12 CFR 34, Subpart C; *see also* Final Rule: Real Estate Appraisals, 55 Fed. Reg. 34,684 (August 24, 1990), republished as Real Estate Appraisal - Final Rule, Banking Bulletin 90-29 (September 5, 1990). This appraisal requirement is, of course, waived "when the entire property is recorded at or below the lower of 5 percent of the bank's equity capital or $25,000." *See* 12 CFR 7.3025(g)(1)(i). The value to be determined by this process is the collateral's "fair value" as that term is defined in 12 CFR 7.3025(d). "Since real estate acquired by a national bank becomes OREO upon acquisition, this triggers the appraisal requirement of . . ." 12 CFR 7.3025. *See* OCC Interpretive Letter No. 348, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,518 (August 15, 1985).

Because accounting rules and the call report instructions require the reporting of the fair value of Accounting OREO on the call report, banks must obtain and must maintain appropriate evaluations, consistent with principles of safety and soundness, that will support the fair value of their Accounting OREO. In obtaining appropriate evaluations for Accounting OREO, a bank must evaluate its collateral when that collateral becomes Accounting OREO to determine its "fair value" as that term is defined in FAS 15, paragraph 13. Again, this requirement comes not from 12 CFR 7.3025, but rather from FAS 15 and the call report instructions. In maintaining appropriate evaluations for Accounting OREO, banks should be guided by accounting rules and the call report instructions. A bank should have a keen interest in obtaining and in maintaining fair value for its Accounting OREO because failure to do so could result in a materially inaccurate call report as discussed below.

Violations

Failure to recognize an ISF as Accounting OREO would not be a violation of 12 CFR 7.3025 because, as a legal matter, this section applies only to Legal OREO. OCC issuances indicate that "[t]he need for reappraisals should receive particular attention in the case of . . . problem credits." *See* OCC Guidelines for Real Estate Appraisal Policies and Review Procedures, Banking Circular 225 (December 21, 1987); *see also* OCC Guidelines for Troubled Real Estate Loans, Banking Circular 208 (BC-208) (October 30, 1985), OCC Guidelines for Troubled Real Estate Loans, Banking Circular 208, Supplement 1 (July 10, 1987); OCC Guidelines for Troubled Real Estate Loans, Examining

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[6] Federal law requires appraisals for certain financial transactions involving real estate. A federally related transaction is

> any real estate-related financial transaction . . . that . . . [t]he OCC or any of its regulated institutions engages in or contracts for, and . . . [r]equires the services of an appraiser.

12 CFR 34.42(e). A real estate-related financial transaction is

> any transactions involving . . . [t]he sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof, or . . . the refinancing of real property or interests in real property, or . . . [t]he use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

12 CFR 34.42(g). Federally related transactions require appraisals that conform with 12 CFR 34.44. *See* 12 CFR 34.43(b) and (c). Acquisition of Legal OREO is one of these transactions.

Circular 234 (EC-234) (October 30, 1985). However, such a failure could indicate "a weakness in loan portfolio administration . . . which [c]ould be criticized." *See* BC-208, *quoting from* EC-234. In addition, such failure could make the call report materially inaccurate, which would be a violation of 12 U.S.C. 161(a).

Failure to obtain appropriate evaluations to support the Accounting OREO's fair value on an ongoing basis would likewise not be a violation of either 12 CFR 7.3025 or 12 CFR 34, Subpart C. Again, these sections do not apply to Accounting OREO. Such failure could be criticized as an unsafe and unsound banking practice. *See* BC-208, *quoting from* EC-234. The result of such failure could also be a materially inaccurate call report, a violation of 12 U.S.C. 161(a).

Conclusion

In closing, I note that the goal of ISF accounting is an accurate financial statement. ISF is a legal matter to the extent that a bank's improper handling of its ISF properties impedes attainment of this goal. Otherwise, ISF is not a legal matter. Although a bank may have foreclosed upon the collateral for accounting purposes, the bank would still have a secured loan to its borrower for legal purposes. The rules generally applied to any loan continue to apply to loans after the collateral is in substance foreclosed for accounting purposes.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

577—April 6, 1992

You have asked whether it is permissible for national banks to purchase preferred stock of the Federal Home Loan Mortgage Corporation (Freddie Mac). It is my understanding from materials provided by Freddie Mac to the Office of the Comptroller of the Currency (OCC) that the preferred stock will be issued under section 306(f) of the Federal Home Loan Mortgage Corporation Act (FHLMC Act). It is my further understanding that Freddie Mac expects this issue of preferred stock to carry an investment grade rating from a national rating agency.

The general powers and investment authority of national banks are set forth in 12 U.S.C. 24(7). This provision also imposes certain restrictions on national banks dealing in, underwriting, and purchasing for their own account securities and stock.

Congress has waived these restrictions in whole or in part for certain instruments, obligations and other securities, including those listed in the sixth sentence of 12 U.S.C. 24(7). Among the instruments, obligations, and securities listed in the sixth sentence of 12 U.S.C. 24(7) are "mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act." *Id.* Section 306(f) of the FHLMC Act provides that Freddie Mac "may have preferred stock on such terms and conditions as the Board of Directors shall prescribe." 12 U.S.C. 1455(f). Accordingly, in my opinion national banks are authorized to deal in, underwrite, and purchase for their own account Freddie Mac preferred stock.

I also have been informed by OCC's Office of the Chief National Bank Examiner that the following supervisory policies are associated with national bank purchases of any marketable equity security.

Regulatory Reporting and Accounting

Existing instructions for the quarterly Reports of Condition require bank holdings of Freddie Mac preferred stock to be reported at the lower of the aggregate cost or market value in Schedule RC-B SECURITIES, Item No. 6(a)(2) (see the instructions for the Report of Condition, glossary entry for "marketable equity securities" and Statement of Financial Accounting Standards No. 12, *Accounting for Certain Marketable Securities*, (FAS 12).

In no case should the carrying value of the preferred stock be increased above its aggregate cost as a result of net unrealized gains. Net unrealized losses on marketable equity securities and subsequent recoveries of net unrealized losses *should be excluded* from Schedule RI-INCOME STATEMENT and instead be reported in Schedule RI-A CHANGES IN EQUITY CAPITAL as an adjustment to "Undivided Profits and Capital Reserves." A loss on an individual investment which is other than temporary should be charged to noninterest expense on Schedule RI-INCOME STATEMENT.

Risk-Based Capital

All national banks are expected to maintain a minimum ratio of total capital to risk-weighted assets pursuant to the Risk-Based Capital Guidelines published as Appendix A to 12 CFR 3. For risk-based capital purposes

Freddie Mac preferred stock should be risk weighted at 100 percent.

Safe and Sound Banking Practice

While the statutes permit unlimited investment, as with any equity issue there are market risks, and share prices may decline due to changes in market interest rates, the issuer's financial standing, or government tax policies. Therefore, the OCC will expect national bank investors to limit their holdings to an amount that reasonably relates to the amount of earnings and/or capital that is prudent to place at risk. The OCC believes that prudential limits of this sort typically are an element of safe and sound banking practice.

Finally, while this letter concludes that it is permissible for national banks to invest in Freddie Mac preferred stock taking into consideration the supervisory policies outlined above, it is not an endorsement of national bank investment in Freddie Mac preferred stock.

William Paul Bowden, Jr.
Chief Counsel

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578—March 5, 1992

This letter is in response to your request for clarification of the Office of the Comptroller of the Currency's (OCC) policies governing notification requirements for expenditures on other real estate owned (OREO). We regret the delay in responding to your inquiry.

As discussed in your letter, an issue was raised during the course of an OCC examination of *** Bank's *** OREO property as to whether the bank had violated 12 U.S.C. 29 by failing to provide the OCC with notice prior to making expenditures for the development and improvement of certain OREO properties. The notification provision of 12 U.S.C. 29 provides in part:

> Upon notification by the association to the Comptroller of the Currency that such conditions exist that require the expenditure of funds for the development and improvement of such real estate, and subject to such conditions and limitations as the Comptroller of the Currency shall prescribe, the association may expend such funds as are needed to enable such association to recover its total investment.

12 U.S.C. 29.

In response to the preliminary notices of violation, you indicated that *** had determined that notification was not required based upon its reading of OCC Examining Bulletin 80-14 (August 29, 1980) (EB 80-14). Based upon my review of Examining Bulletin 80-14, I do not agree with ***'s conclusion that notification was not required. This conclusion rests on a number of factors, including a plain reading of the statute and the Examining Bulletin. First, as noted by Examiner ***, the bulletin was intended to provide interim guidance in anticipation of a revision to Interpretive Ruling 7.3025. This is apparent from the fact that the bulletin is directed solely to OCC Regional Administrators, Department and Division Heads and not to the banking community as a whole. Second, the text of the bulletin specifically provides that:

> The notification requirements cannot, of course, be implemented until the revised Interpretive Ruling 12 CFR 7.3025 is published and becomes final. In the interim, you should be receiving notifications from <u>all</u> banks planning additional expenditures on other real estate owned and should be guided by the conditions and limitations section of page 2.

OCC Examining Bulletin (80-14) (emphasis in original). Since the new standards set forth in the bulletin were expressly conditioned on the revision of Interpretive Ruling 7.3025, a condition which has not yet been met, the *de minimis* notification rules were never adopted as official OCC policy. Consequently, notifications continue to be required for all additional expenditures on OREO property. This conclusion is not altered by the fact that the bulletin remains listed as a current issuance since the bulletin, by its terms, does not eliminate the notification requirement.

Finally, even though the OCC referenced Examining Bulletin (80-14, in No Objection Letter No. 87-10 (November 27, 1987), *reprinted in*, [1987-88 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,039, it should be noted that the letter involved a novel foreign sovereign DPC transaction and merely served to notify the participants of conditions governing improvements to DPC property. As noted in your letter, The OCC alerted the parties to the transaction that the OCC was in the process of reviewing its notification procedures and that the views expressed in the No Objection letter would be subject to the outcome of this review.

It is therefore my opinion that Examiner *** was correct in his conclusion that ***'s failure to adhere to the notification requirement under 12 U.S.C. 29 would constitute a violation of the statute. Henceforth, *** should take appropriate steps to insure that the OCC receives the required notification prior to the bank's expenditure of funds for the development and improvement of its OREO property. *** ***

As is the case with all OREO expenditures, steps should be taken to properly document that (1) the expenditures are consistent with applicable laws and regulations, (2) the expenditures are in the bank's best interest, and (3) the bank is continuing its efforts to dispose of the property. *** ***

I trust this has clarified the OCC's position regarding notification under 12 U.S.C. 29.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

579—March 24, 1992

Your letter to *** the Office of the Comptroller of the Currency (OCC), has been referred to me for response. You have requested that the OCC issue an interpretation concerning the eligibility for purchase by national banks of certain participation certificates that represent interests in pools of Federal Housing Authority (FHA) insured Title I property improvement loans.

Facts

Based upon your July 18, 1991, correspondence and information that you provided in subsequent telephone conversations with Laura Plaze of this office, I understand the facts to be as follows:

Title I loans are loans made by qualifying depository institutions and other lenders for the purpose of protecting or improving residential and non-residential property. Up to 90 percent of the losses on each loan are insured by the Department of Housing and Urban Development (HUD) pursuant to Title I of the National Housing Act, 12 U.S.C. 1701, subject to the amount of the lender's "insurance coverage reserve account" at HUD. The reserve account, which is established by HUD for each approved Title I lender, is generally equal to 10 percent of the Title I loans that HUD has paid to cover losses on those loans. The HUD insurance payments may not exceed the amount in the lender's reserve account and are limited to 90 percent of the losses on any one loan.

Your company acts as private placement agent for the sale of pass-through certificates (Class A Certificates) that represent 90 percent fractional undivided interests in pools of Title I loans. The private offerings of the Class A Certificates are not registered with the Securities and Exchange Commission (SEC) under the Securities Act of 1933.

The seller of the Class A Certificates is the insured party under HUD regulations and retains legal title to the whole loans. The seller continues to service the underlying loans and is contractually obligated to pass through to the certificateholders 100 percent of the insurance proceeds on any defaulted loans. The seller retains the remaining 10 percent undivided interests in the loan pools (Class B Certificates), which represent the uninsured portions of the Title I loans.

The seller warrants to the Class A Certificateholders that the loans are qualified Title I improvement loans that are insurable under the National Housing Act. In the event that HUD rejects a claim of insurance, the seller is obligated to repurchase the loan as a breach of representations and warranties.

As servicer, the seller is responsible for collecting and distributing to the Class A Certificateholders payments of principal and interest (at the pass-through rate), as well as other proceeds received with respect to the loans (*e.g.*, liquidation proceeds, awards or settlements, HUD insurance payments). In general, 90 percent of the principal collected is distributed to the Class A holders. The Class A holders are also entitled to 90 percent of the <u>scheduled</u> interest payments on the underlying loans, adjusted to the pass-through rate. In the event of delinquencies in the interest payments, the seller/servicer must advance the amounts due from that portion of the princial and interest collections that would otherwise be paid to itself as the Class B holder or from its own funds (the subordinated advance). The seller's obligation to make subordinated advances with respect to any loan terminates upon the filing of a claim for HUD insurance (if such claim is not rejected), or if the aggregate amount of the advance would exceed 90 percent of the scheduled interest payments for 90 days on the subject loan.

The seller/servicer/Class B holder is entitled to reimbursement for the subordinated advances only from delinquent interest payments that might subsequently be made on the subject loan(s), or from the interest portion of the HUD insurance proceeds, if any, that are ultimately paid on the claim. Should these sources be insufficient to cover the amounts advanced to the Class A holders, the seller/servicer/Class B holder will not be reimbursed for its losses.

Discussion

In your letter you inquire whether the Class A Certificates are eligible for investment by national banks either as Type I or Type III investment securities, or if they may be treated as loans or loan participations by purchasing national banks. Each of these possibilities is discussed below.

Type I Securities. Type I securities are eligible for a national bank to purchase, deal in, and underwrite without quantitative limitation, subject only to the exercise of prudent banking judgment. *See* 12 CFR 1.4. Type I securities include "obligations of the United States," which term includes "obligations . . .insured . . . by a department or an agency of the United States Government. . . provided that the . . . insurance. . . commits the full faith and credit of the United States for the repayment of the obligation." *See* 12 CFR 110(a).

In my opinion, the Class A Certificates would not qualify as Type I investment securities. Although the Class A Certificates represent the 90 percent portion of the loan pool that is eligible for the HUD Title I insurance, the HUD obligation to cover loan losses is limited to the amount of the lender's "insurance coverage reserve account." Because of this limitation, the HUD insurance coverage does not represent the full faith and credit commitment of the United States to the repayment of the 90 percent portion of the underlying loans. Therefore, since the insured portions of the underlying loans do not qualify as "obligations of the United States" under 12 CFR 1, it is clear that the Class A Certificates that evidence ownership of this portion of the pool would also not qualify as Type I securities.

Type III Securities. Type III securities are eligible for purchase and sale by a national bank subject to a 10 percent of capital limitation. Type III investment securities must be marketable obligations of investment quality. *See* 12 CFR 1.3(b) and 1.5(a). A security is "marketable" if it "may be sold with reasonable promptness at a price which corresponds reasonably to its fair value." *See* 12 CFR 1.5(a).

As explained above, the Class A Certificates are sold to investors in unregistered private placements. In the past, the OCC has generally declined to find that privately placed securities qualify as Type III investment securities because SEC restrictions on the resale of unregistered securities severely limited their marketability. *See, e.g.*, Interpretive Letter No. 41 (May 18, 1978), *reprinted in* [1978-79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,116. In your correspondence, you indicate that a secondary market now exists for the Class A Certificates as a result of the SEC's adoption in 1990 of Rule 144A, 17 CFR 230.144A. You suggest that the Class A Certificates therefore meet the marketability requirement for Type III investment securities.

Rule 144A provides a safe harbor from the registration requirements of the Securities Act of 1933 for the immediate resale of privately placed securities to qualified institutional buyers. The OCC is currently considering, in response to another interpretive request, whether privately placed securities traded in the Rule 144A market can meet the marketability requirement for investment securities. As this matter is under review it is not possible for me to respond in this letter to your argument that the Class A Certificates qualify as Type III investment securities. Any decision that the OCC reaches on the Rule 144A question will be published. Should the OCC determine that it is possible for some privately placed securities to be investment securities, it may be appropriate for you to request reconsideration of whether the Class A Certificates meet the marketability and investment quality standards for Type III investment securities.

Loans or Loan Participations. Regardless of whether the Class A Certificates qualify as Type III investment securities, it would be possible for a national bank to purchase the Certificates for its loan account and treat them as loan participations. The OCC has previously concluded that national banks may purchase participation interests in pooled loans under their general lending powers, subject to safety and soundness restrictions. *See, e.g.*, Interpretive Letter No. 25 (February 14, 1978), *reprinted in* [1978-79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,100; Interpretive Letter No. 41, *supra*; letter dated November 5, 1991 from William B. Glidden, Assistant Director, Legal Advisory Services Division (unpublished) (Glidden letter).

Specifically, national banks that purchase the Class A Certificates for their loan portfolios must adhere to the prudential requirements for the purchase of loans and loan participations that are described in Banking Circular 181, Rev. (August 2, 1984). Among other things, a bank purchasing the certificates would be expected to perform an independent credit analysis of each loan pool to satisfy itself that the underlying credits meet its own credit standards. *See* Glidden letter, *supra*

You inquire in your letter how the lending limit of 12 U.S.C. 84 would be applied to national bank purchases of the Class A Certificates as loan participations. This statute limits a national bank's total unsecured loans and extensions of credit to any one borrower to 15 percent of the bank's unimpaired capital and surplus. You suggest that for purposes of calculating the lending limit, the Class A Certificates should be treated as loans to the underlying borrowers and not as loans to the seller/servicer. As discussed below, based upon prior OCC legal interpretations, it is my conclusion that the lending limit should be applied to the seller/servicer.

First, although you state that the seller/servicer sells the 90 percent portion of the loans evidenced by the Class A Certificates without recourse, it seems clear that the seller and purchasers do not share the credit risk for the loans on a pro rata basis with their respective

amounts. The seller/servicer retains the Class B Certificates, which are subordinate to the Class A Certificates. As described above, the Class B Certificateholders stand ready to cover delinquencies in the interest payments due the Class A Certificateholders, with no absolute assurance that the subordinated advances will be recovered. As holder of the subordinated class, the seller/servicer retains a disproportionately high amount of the credit risk relative to its 10 percent interest in the loan pool.[1]

The OCC has long held that if the seller and purchaser of loan participations do not share the credit risks for the loans on a pro rata basis, the transaction loses its character as a sale and is treated as a borrowing/lending transaction. For purposes of 12 U.S.C. 84, the purchaser in such transactions is considered to have made a loan or extension of credit to the seller in the amount of the purchase price.[2] *See* Interpretive Letter No. 262 (June 27, 1983), *reprinted in* [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,426. Under this interpretation, national banks would be required to treat any Class A Certificates purchased for their loan portfolios as loans or extensions of credit to the seller/servicer that retains the Class B Certificates.

In addition, under applicable OCC precedent, even if the seller/servicer does not retain a subordinated interest, national banks would still be limited to holding no more than 15 percent of their capital and surplus in the Class A Certificates sold by a single seller/servicer. The OCC has previously concluded that national bank purchases of interests in pooled loans, whether held as loans or investment securities, should not exceed the 15 percent lending limit or 10 percent investment limit (as applicable) with respect to the interests sold by any one seller. *See* Interpretive Letter No. 7 (December 12, 1977), *reprinted in* [1978-79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,082; Interpretive Letter No. 25 *supra*; Interpretive Letter no. 41, *supra*; Glidden letter, *supra*. The decision to apply the lending or investment limit to the seller/servicer even where the seller does not retain explicit liability on the underlying loans is based on the significant reliance that the purchasing bank places on the entity that originates and services the pooled loans.

From the description that you have provided, it appears that the purchasers of the Class A Certificates will place considerable reliance on the seller/servicer.[3] Not only does the purchaser rely on the seller/servicer to perform all the normal functions of a loan servicer, but the purchaser must also accept the seller's representation that the pooled loans do in fact qualify for HUD Title I insurance. In addition, the purchasers have no right to receive insurance proceeds from HUD but must rely on the servicer to pursue the claims in its own right and to forward amounts received as specified under the contract.

Accordingly, whether one focuses on the seller/servicer's retention of the subordinated Class B Certificates, or simply applies the OCC's previous rulings on the application of the lending limit to participation interests in pooled loans, it is my conclusion that the Class A Certificates should be treated as loans or extensions of credit to the seller/servicer under 12 U.S.C. 84. For purposes of applying the lending limit, all Class A Certificates sold by a single seller should be combined, even if sold in separate issues. *See* Interpretive Letter No. 7, *supra*; Interpretive Letter No. 25, *supra*; Interpretive Letter No. 41, *supra*.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

580—April 9, 1991

This is in response to your letter of August 30, 1990, to Deborah Lewis, Investment Securities Assistant, which has been referred to me for reply. You request the opinion of the Office of the Comptroller of the Currency (OCC) on the authority of a national bank to become a member of and own stock in a Federal Home Loan Bank.

Section 704 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, 103 Stat. 415, amended section

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[1] Because it is clear that retention of the Class B Certificates amounts to disproportionate loss sharing, it is not necessary to determine whether any of the seller/servicer's other responsibilities under the servicing agreement might also constitute acceptance of credit risk from the transferred loans.

[2] [illegible] that the seller/servicer is a national bank, the seller would [illegible] include the transferred portion of the loans in calculating [illegible] to the underlying borrowers under 12 U.S.C. 84. [illegible] 12 CFR 32.107(a) (transfer of loan participation must [illegible] credit risk in order to remove loan from [illegible] national banks should be [illegible] Class B Certificates [illegible] with recourse [illegible]

[3] The fact that the Certificateholders have the right to dismiss the servicer for violation of its duties does not alter this analysis. The right to terminate the servicer for cause is a usual provision of servicing agreements for securitized assets. *See* Tamar Frankel, *Securitization: Structured Financing, Financial Asset Pools, and Asset-Backed Securities* 14.10 (1991).

4(a) of the Federal Home Loan Bank Act (Act) to provide, in pertinent part, that "any insured depository institution (as defined in section 2 of the Act) shall be eligible to become a member of a Federal Home Loan Bank: if such institution meets the requirements of section 4(a). *See* 12 U.S.C. 1424(a). Section 2(12) of the Federal Home Loan Bank Act, 12 U.S.C. 1422(12), defines "insured depository institution" to include "an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)." Section 3 of the Federal Deposit Insurance Act defines the term "insured depository institution" to mean "any bank or savings association the deposits of which are insured by the [Federal Deposit Insurance] Corporation" and defines "bank" to include national banks. *See* 12 U.S.C. 1813(a)(1) and (c)(2). In addition, section 704 of FIRREA also repealed section 27 of the Federal Home Loan Bank Act (12 U.S.C. 1447) which had expressly prohibited national banks from becoming a member of and subscribing for stock of a Federal Home Loan Bank.

The Conference Report accompanying FIRREA explains the purposes of section 704:

> The purpose of this section is to provide for expanded membership in the [Federal Home Loan] Banks to include Federally insured commercial banks and credit unions that engage in mortgage lending. A Federally insured bank or credit union would qualify for Bank membership if its financial condition is acceptable, its management and home-financing policy are consistent with sound economic financing. . . . This expansion of Bank membership is intended to promote and sustain housing finance and the Banks. The Committee believes that the extension of membership to insured commercial banks and credit unions that engage in mortgage lending will strengthen the Banks and their ability to support the mortgage market.

H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424-25 (1989), *reprinted in* 1989 U.S. Code Cong. & Ad. News 86, 463-64.

Accordingly, national banks that are insured depository institutions under the Federal Deposit Insurance Act are authorized by this enabling legislation in FIRREA to become members of Federal Home Loan Banks. In addition, therefore, inasmuch as section 6 of the Federal Home Loan Bank Act, 12 U.S.C. 1426, requires stock ownership for members, national banks are also authorized to purchase and own stock in the Federal Home Loan Banks, at least to the extent required under section 6.

The OCC neither encourages nor discourages membership and investment in Federal Home Loan Banks. Such decisions are the responsibility of each national bank's management and board of directors. At the present time, the OCC has no guidelines or restrictions specifically addressing Federal Home Loan Bank membership and stock ownership, other than general rules of prudence and appropriate banking practices. However, I do wish to note that the authority for and/or suitability of investments in Federal Home Loan Bank stock in other circumstances — for example, ownership of stock when the bank is not a member, ownership of stock to an extent greater than that required for membership, or ownership of stock when the bank is not utilizing its Home Loan Bank membership but treating the stock ownership only as a passive investment — would raise additional concerns for the OCC.

Robert B. Serino
Deputy Chief Counsel (Policy)

* * *

582—April 24, 1992

Your letter to Robert R. Klinzing, Deputy Comptroller of the Currency, Midwestern District, has been referred to me for response. The inquiry involves *** *** (bank) and its affiliated finance company in *** (finance company). I am writing to assure you that we are actively considering the questions raised in your letter.

You have indicated that *** customers are invited to bring their tax returns to *** offices and that tax returns are prepared and filed electronically with the IRS. The customer then obtains a loan from the bank in the amount of his or her anticipated refund, less handling and finance charge, and the customer transfers his or her rights to the refund as security for the loan. I understand that these transactions are in many ways like assignments of tax refunds, but are structured as loans for a number of reasons, including the fact that federal law at the 31 U.S.C. 3722 prohibits the assignment of claims against the United States Government (such as claims for refund of overpayment of taxes) before the amount of the claim has been decided and a warrant for payment has been issued.

As I understand this program's development, in its initial stage, loan proceeds were delivered by the bank from its premises to loan customers by means of mail or other commercial delivery service. Subsequently, loan cus-

Editor's note Interpretive Letter No 581 is omitted. It is identical to Interpretive Letter No 577

tomers were provided the option of either obtaining their loan proceeds through the mail or, alternatively, by means of a bank cashier's check at the premises of the finance company. At this time it appears likely that this second alternative is the option elected by most of the loan customers.

The question as to whether this arrangement constitutes branch banking is not easily resolved. Our review is occurring in connection with reviews of other proposals under which national banks are seeking to provide banking services to their customers from the premises of other financial institutions. The impetus for these proposals, as you are probably aware, has been the enactment of laws by a number of states in recent years under which the provision of services in such a manner to state bank customers does not constitute branch banking under the laws of those states.

The Office of the Comptroller of the Currency's (OCC) Loan Production Office Ruling, 12 CFR 7.7380, provides that a national bank may originate loans at locations other than its main office or a branch office without running afoul of the branching laws if the loans are approved and made at a bank office. If in the *** situation the loans are being made by the bank in Delaware, but the loan proceeds in some or most instances are being disbursed by the finance company in Missouri, then the OCC's Loan Production Office Ruling may not serve as a safe harbor for the bank's program and thus would not alone justify a conclusion that this is not a branch. Twelve CFR 7.7380 speaks of loans being "approved and made" at the bank, and our interpretations indicate that the bank's loan production office cannot disburse loan proceeds and still enjoy the safe harbor of the ruling.

However, even assuming for discussion purposes that loan disbursements are generally made at the finance company, this fact alone does not resolve the matter. That an office does not meet all the criteria of the Loan Production Office Ruling does not in itself render the office a "branch." If the bank mailed the cashier's checks to the customers' homes, or if the finance company mailed or delivered them to the customers' homes, we believe there would be no branching issue under federal law. No one would seriously suggest that a post office box from which loan proceeds may be transmitted or a customer's home at which such proceeds are received is a branch office. Given that no branching issues would arise from a national bank's transmittal of loan proceeds by mail to a customer's residence, we are concerned with the seeming anomaly that would be created should the McFadden Act be construed to prohibit participating loan customers from picking up their checks in person. Therefore, we are examining whether disbursement of loan proceeds under the facts presented here necessarily transforms the operation into a branch.

In addition, by definition in 12 U.S.C. 36, a "branch" of a national bank is an entity established and operated by the bank. Therefore, we need to consider whether the finance company has been established and is being operated by the bank. It does not seem logical to say that the bank has "established" and is "operating" the finance company in Missouri merely because of the arrangement between the two institutions. We understand that the finance company has established its own offices in Missouri without any assistance from the bank, conducts its own independent business operations, employs no bank personnel, and that its participation in the tax anticipation loan program constitutes only a small, seasonal part of its activities in the state.

This situation appears to resemble one addressed in OCC Interpretive Letter No. 127, Fed. Banking L. Rep. (CCH) para. 85,208 (Oct. 18, 1979), wherein the OCC reached no definitive conclusion with respect to circumstances under which a national bank's customers were permitted to make deposits to their accounts by delivering checks to an out-of-state savings and loan association. While, as indicated, no definitive conclusion was reached in that letter, the OCC did not require the cessation of such activity, seemingly in part because the thrift was not established by the bank, *citing Independent Bankers Ass'n of America v. Smith*, 534 F.2d 921, 951 (D.C. Cir. 1976) (a customer bank communication terminal (CBCT) performing banking transactions for customers may be a bank branch if it is "established" (*i.e.*, owned or rented)" by the bank). More recently, *Independent Bankers Ass'n of New York v. Marine Midland Bank*, 757 F.2d 453 (2d Cir. 1985), *cert. denied* 476 U.S. 1186 (1986), has held that a nonproprietary automated teller machine (ATM), *i.e.*, an ATM not owned or rented by a bank which receives deposits at the ATM, is not a branch office of that bank.

That the bank and the finance company are owned by the same holding company does not appear in and of itself to require a finding that the finance company was "established" and is being "operated" by the Bank. Although in *Whitney National Bank v. Bank of New Orleans and Trust Company*, 323 F.2d 290 (1963), *reversed on other grounds*, 378 U.S. 411 (1965), the D.C. Circuit indicated that it is possible for a bank to be deemed a branch of another bank where the two banks are in fact being operated as a single entity, it is highly unusual to pierce the corporate veil based on this unitary operation theory. Indeed, *Whitney* is the only case we have found where one bank was in effect treated as a branch of another bank. We are considering whether the limited quantity and quality of services

which are involved in ***'s situation necessarily require a finding that a unitary operation exists between the bank and the finance company.

A number of cases have determined under various fact patterns that affiliated banks should not be held to have lost their separate corporate identities under the banking laws. *See, e.g., First Nat. Bank of Billings v. First Bank Stock Corp.*, 306 F.2d 937 (9th Cir. 1962); *Camden Trust Co. v. Gidney*, 301 F.2d 521 (D.C. Cir. 1962), *cert. denied* 369 U.S. 886; *Central Bank v. Smith*, 532 F.2d 37 (7th Cir. 1986); and *Grandview Bank and Trust v. Board of Governors*, 550 F.2d 415 (8th Cir. 1977), *cert. denied* 434 U.S. 821. The court noted in *Grandview, supra* 419-20, that Congress has permitted multi-bank holding companies even though many of their operations may simulate branch banking. Absent "fraud or a complete subterfuge," *id.* at 420, the court believed that this policy judgment should be respected by the judiciary.

We are also considering whether the arrangement between the bank and the finance company may properly be considered a correspondent or related-type function. Correspondent and similar types of relationships have become commonplace in the banking industry, among both affiliated and unaffiliated institutions, and the *** arrangement might be found to fall within this rubric. In this regard, an OCC interpretive letter published in [Transfer Binder 1978-79] Fed. Banking L. Rep. (CCH) para. 85,060 (Oct. 3, 1977) found various interbank services for customers for a bank holding company family to be permissible without requiring branch licenses, *citing United States v. Citizens and Southern Nat. Bank*, 422 U.S. 86, 117 (1975) (check clearing and electronic transfers of funds are examples of permissible correspondent bank services, notwithstanding that such arrangements have "branch-like" qualities). The Federal Reserve Board also allows bank holding companies to transport checks, commercial paper and other documents among affiliated banks through the use of a courier services subsidiary.

On the basis of our analysis to date, we believe that substantial reasons may exist to conclude that federal branching law is not implicated by arrangements such as that existing between the bank and the finance company. Accordingly, we have determined not to request the bank to discontinue its activities at this time. We will advise you when a final determination is made in this matter.

William Paul Bowden, Jr.
Chief Counsel

* * *

583—April 27, 1992

Your letter dated December 6, 1991, has been referred to me for reply. It asks whether certain Government Export Trust Series A Pass-Through Certificates (trust certificates), backed by notes that are guaranteed as to all payments of principal and interest by a combination of guarantees by the Export-Import Bank of the United States (Eximbank) and through subordination of a Government Export Trust Series B Pass-Through Certificate Series B Certificate held by *** (servicer), constitute "obligations of the United States" that national banks may deal in, underwrite, purchase, and sell for their own accounts without limitation. *** proposes to sell the trust certificates to institutional purchasers and asks whether the trust certificates may be purchased by national banks as Type I investments.

The Trust Certificates

***, Inc. (dealer), a registered general securities dealer, proposes to place privately three separate issues of trust certificates. In the first issuance, the subject of your letter, the trust certificates evidence undivided fractional interests in the assets of a duly established grantor trust, at an interest rate of 6.4 percent. The assets of the trust consist of promissory notes totaling $50,021,550 (notes) (at an interest rate of 6.75 percent) acquired from the servicer, executed by *** (the borrower), guaranteed by Eximbank. The proposed trust will consist of two classes of certificates: trust certificates amounting to $49,500,000 that the dealer proposes to place privately, and the Series B Certificate, in the amount of $521,550, which will be held by the Servicer. The Series B Certificate will be subordinate to the trust certificates.[1] The structure of the trust and the subordination of the Series B Certificate will provide the trust certificates with an Eximbank guarantee of 100 percent of all principal and interest, as follows: (1) Eximbank guarantees payment of the full principal of the notes, and therefore the full principal of the trust certificates; (2) Eximbank guarantees substantially all of the interest (6.25 percent) on the underlying notes, and therefore substantially all of the interest due to the trust certificates; and (3) under the terms of the trust agreement, 100 percent of the Series B Trust Certificate is pledged to cover any shortfall in interest on the trust certificates. None of the Eximbank guaranteed principal and interest will be paid by the trustee

[1]As far as *** bank is concerned, the retention of the subordinated Series B Certificate indicates that the transaction would likely be an asset sale with recourse for regulatory reporting purposes and for purposes of the risk-based capital requirements. See 12 CFR 3, appendix A, section 3

on the Series B Certificate until all interest due to the holders of the trust certificates has been paid. The $521,520 Series B Certificate has been mathematically sized to ensure that any interest shortfall on the trust certificates is covered by the Eximbank guarantee on the Series B Certificate portion of the notes.

Under the trust agreement, the trustee, *** ***, in the event of payment default by the borrower on the notes, will seek payment from Eximbank. Under the guarantee, Eximbank is required to pay to the trustee, within five business days of a demand by the servicer on behalf of the trustee, an amount equal to the sum of (i) the principal of the note maturing on the immediately preceding note payment date, and (ii) the interest which would have accrued on the notes to such note payment date as well as interest on the unpaid principal amount of the note maturing on such noted payment date which would have accrued from such note payment date to the date of payment by Eximbank.

Although the Eximbank guarantee contains procedural requirements and several restrictions,[2] the guarantee commits the full faith and credit of the United States government.[3] *See* Supplementary Information, Final Rule, 47 Fed. Reg. 5701, 5702 (Feb. 8, 1982).

Obligations of the United States Government

It is apparent that the trust certificates are not "obligations of the United States" in the traditional sense. Your letter proposes that the underlying composition of the trust certificates (i.e., the Eximbank guarantee and the structure of the trust subordinating the Class B Certificates to the trust certificates), if considered together, would constitute obligations of the United States for the purposes of 12 U.S.C. 24 (Seventh) and qualify as "Type I" Securities under 12 CFR 1.3(c).

A substantially similar approach has formed the basis of prior OCC interpretations in the past. For instance, in a letter dated December 14, 1990, the OCC confirmed that certain securities backed by notes that were secured as to all payments of principal and interest by a combination of a guarantee of the Eximbank and either U.S. Treasury securities or cash constituted Type I securities. *See* letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division (Dec. 14, 1990) (unpublished) (Liebesman letter). In thus concluding, the OCC reasoned that the certificates take on the attributes of the underlying U.S. government or agency obligations because the combined guarantee and pledge of securities was sufficient to fully pay principal and interest upon maturity. This position was consistent with 12 CFR 1.110(b) and 1.120(e), which focus on the sufficiency of the underlying collateral for the "full and timely payment of interest on, and principal of, the obligation." In addition, the OCC previously had permitted national banks to underwrite and deal in certain mortgage-backed, pass-through certificates based on the underlying guarantee provided by the particular government sponsored agency (*i.e.*, the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Association (FHLMC)). *See* Liebesman letter and letters cited therein. Because the Eximbank guarantee supporting the underlying obligations is fully transferrable, *see* 12 U.S.C. 635(c)(3)(1991), the OCC determined that securities backed by such guarantees should be afforded similar treatment to that provided to conventional mortgage-backed, pass-through certificates. *See* Liebesman letter. The letter continued that "as long as that portion of the Securities not covered by the Eximbank guarantee is collateralized by either U.S. Treasury securities or cash held in escrow, there is little justification for not treating the Securities as 'obligations of the United States'". Liebesman letter.

A crucial difference exists between the facts in the Liebesman letter and those of the present case. In the Liebesman letter, the portion of the securities not covered by the Eximbank guarantee were collateralized by either U.S. Treasury securities or cash held in escrow; in the present case, the portion of the Trust Certificates not covered by the Eximbank guarantee will be secured by the subordinated Series B Certificate, which, in turn, is guaranteed (to the same extent as the trust certificates) by the Eximbank guarantee. Upon the borrower's default, payment by Eximbank of its guarantee is made to the trust, the trustee will distribute the proceeds first in full to the trust certificateholders, then the remainder to the Series B certificateholder. *See*

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[2]The Eximbank guarantee contains these restrictions: (1) The guarantee will terminate with respect to any unpaid scheduled principal payment and/or interest payment on the notes if demand is not made on Eximbank within 150 calendar days after the due date of such scheduled principal payment and/or interest payment (but failure to make demand will not affect Eximbank's guarantee of any other unpaid principal payment or interest payment); (2) If the servicer or trustee agrees without Eximbank's prior consent to any material amendment of the notes or any material deviation from the provisions of the notes, or accelerates the maturity of the notes, Eximbank's guarantee will terminate unless the changes are rescinded or remedied to Eximbank's satisfaction; (3) The guarantee will terminate if the holder of the notes fails to accelerate the maturities of the notes within 30 calendar days after request from Eximbank to do so following a payment default that has continued for 180 days [illegible] Eximbank having been made by the trustee or [illegible].

[3]The OCC has previously addressed the contractual liabilities of the [illegible] under the authority of its governing statute, 12 U.S.C. [illegible] guarantee constitutes a full faith [illegible] of the United States. *See* OCC Interpre[illegible] Fed. Banking L. Rep. [illegible] 42 Op. Att'y Gen. 327 [illegible]

Offering Memorandum at 9, 12. The series B Certificate was sized mathematically to ensure that upon payment by Eximbank on its guarantee, any interest deficiency that would cause a short distribution to the trust certificates would be covered by the amount due the Series B Certificate.

Under 12 U.S.C. 24 (Seventh), a bank may invest unlimited amounts in Type I securities, which include obligations "secured by an escrow fund consisting of obligations of the United States" if the "escrowed obligations produce interest earnings sufficient for the full and timely payment of interest on, and principal of, the obligation." 12 CFR 1.120(e)(1992). The OCC has interpreted the statement in 12 CFR 1.120(e) referring to "interest earnings" to mean "interest earnings and principal upon maturity." *See* Investment Securities Letter No. 11, [1988-1989 Transfer Binder] Fed. Banking L. Rep. ¶ 85,881 (Nov. 26, 1986).

The satisfaction of 12 CFR 1.120(e) requires the use of an escrow fund to hold the government obligations securing the obligation in question. In this case, the obligations in question are the trust certificates. While the guarantee of the Eximbank does not quite cover 100 percent of the total obligation of the trust certificates, under the proposed structure (the trustee will hold a sufficient quantity of the obligations guaranteed by the Eximbank — in essence in escrow — to pay 100 percent of the principal and interest on the trust certificates in a timely manner upon maturity. The grantor trust with the subordinated Series B Certificate, in this case, is the equivalent of an escrow fund and, consequently, would be covered by 12 CFR 1.120(e). *Cf.* Investment Securities Letter No. 11, *supra* (collateral trust indenture is the equivalent of an escrow fund).

In conclusion, the trust certificates constitute "obligations of the United States" that national banks may deal in, underwrite, purchase, and sell for their own accounts without limitation. National banks wishing to purchase these Type I investments for their own accounts must exercise prudent banking judgment. *See* 12 CFR 1.4, 1.8 (1992).

William B. Glidden
Assistant Director
Legal Advisory Services Division

* * *

584—May 22, 1992

This is in response to your letter of April 22, 1992, seeking an advisory opinion on behalf of your client, *** *** (Alabama), regarding the proposed operation of an office in Atlanta, Georgia, for the purpose of providing international banking services.

The following represents a description of the facts contained in your inquiry as supplemented by our telephone conversations. A substantial part of the banking business of *** *** (Georgia) has been acquired by the *** (Atlanta). *** Georgia had an international department for some years, but *** Atlanta has never had an international banking capability and is therefore not in a position to assume this aspect of *** Georgia's business.

*** Alabama on the other hand has had an international department since 1976 and plans to take over the international banking functions formerly handled by *** Georgia. *** Alabama's department currently has 26 employees providing services to customers doing business with foreign countries. It emphasizes traditional documentary and trade finance services for "middle market" companies.

*** Alabama will use the international banking capabilities acquired from *** Georgia to assist smaller companies in the Atlanta market with their export and other international transactions. Using former *** Georgia staff, *** Alabama's office in Atlanta will have an initial staff of no more than six and will be located in the same building as *** Atlanta's head office. It will be supervised by and report to the management of *** Alabama's international department, and in its dealings with foreign banks, the Atlanta office will take advantage of correspondent relationships developed and maintained over the years by *** Alabama.

It is anticipated that the Atlanta office of *** Alabama will offer traditional international banking services to companies doing business in Georgia, which you describe as follows:

- issue advise, and confirm letters of credit;
- determine the extent to which documentation submitted by letter of credit beneficiaries conforms with the terms of the respective letters of credit;
- collect payments on behalf of customers from entities in other countries;
- make payments on behalf of customers to entities in other countries; and,
- administer credit facilities approved by appropriate authority (in *** Alabama)

It is expected that the Atlanta office will handle international transactions for customers of *** Alabama and *** Atlanta. No loans or other extensions of credit will be approved by the Atlanta office, no checks will be paid, no bank accounts will be maintained, and no deposits will be received there. As funds are generated from international transactions processed by the Atlanta office, they will be credited to the accounts of customers at *** Alabama and *** Atlanta as appropriate.

Obviously the types of services described are permissible for a national bank, so the only legal question is whether they constitute activities which would make the Atlanta office a branch of *** Alabama under 12 U.S.C. 36. The decision most relevant is *Clarke v. Securities Industry Assn.*, 479 U.S. 388 (1987), wherein the Supreme Court held that a national bank could perform its securities brokerage operations both within and outside the state where the bank was headquartered. The Securities Industry Association (SIA) had argued that under 12 U.S.C. 36 and 81 the bank must conduct all of its business at a main office or branch, including the securities brokerage transactions at issue. The Court rejected this interpretation. It reasoned that 12 U.S.C. 36 and 81 require a national bank to carry on at its main office or a branch all "core banking functions," which are enumerated within 12 U.S.C. 36(f), but that the bank need not conduct all of its other business activities at such locations. *See id.* at 404, 405, and 409.

The core functions listed in 12 U.S.C. 36(f) are the receipt of deposits, the payment of checks, and the lending of money. If any of these three activities will take place in the Atlanta office, then that office would need to be a branch office. It could not be a branch office of *** Alabama, since national banks are limited in their branching to the state within which the main office is located (here, Alabama). You indicate that none of the three core banking functions listed will occur in the Atlanta office.

However, in a telephone conversation you did indicate that while most of the letters of credit issued by the Atlanta office will be trade or commercial letters of credit, a few of them may be standby letters of credit. The OCC's lending limit regulation at 12 CFR 32.2 defines a standby letter of credit transaction as a loan or extension of credit for purposes of the regulation. It excludes a commercial or trade letter of credit from such coverage. In my opinion, the loan definition for purposes of the 12 U.S.C. 84 lending limit statute should be the same for purposes of the 12 U.S.C. 36 core function test. Therefore, if the Atlanta office will be involved with standby letters of credit, it must do so in a way which would qualify it as a loan production office under 12 CFR 7.7380. This ruling permits a national bank to originate loans at nonbranch locations provided that the loans are "approved and made" at a main office or branch office. Please give me a call if you or your client have any question about how to achieve compliance with the ruling.

Assuming that the Atlanta office conducts the standby letter of credit transactions in a way that conforms to loan originations permissible under 12 CFR 7.7380, and that it does not otherwise engage in the making of loans, cashing of checks, or receipt of deposits, in my opinion the office would not be a branch of *** Alabama. This conclusion is based primarily on *Clarke v. Securities Industry Assn., supra.*, and on the further consideration that the international banking services are a discrete, rather narrow range of banking activity for import-export oriented customers.

William B. Glidden
Assistant Director
Legal Advisory Services Division

* * *

585—June 8, 1992

This is in response to your letter of March 17, 1992, to Eric Thompson, Director of the Legal Advisory Services Division of the Office of the Comptroller of the Currency (OCC). On behalf of [your client] bank, you request the OCC's opinion concerning the permissibility of the bank's proposal to securitize motor vehicle retail installment sales contracts (auto receivables) purchased from automobile dealers.

As explained below, there is no legal objection to the bank's proposal, which is similar to numerous other transactions that the OCC has approved for national banks. However, the bank is advised that the transfer of the auto receivables under the proposed structure would not receive sales treatment for regulatory accounting purposes. The full amount of the receivables would remain on the bank's balance sheet and the bank would be required to hold regulatory capital against those assets.

The Proposal

According to your letter, and as more fully described in the confidential private placement memorandum and pooling and servicing agreement that you provided, the transaction would be structured as follows. The bank has a dealer-paper program under which selected automobile dealers originate auto receivables in accordance with the bank's credit standards. The bank purchases the receivables after performing its own independent credit review. The bank proposes to trans-

fer the receivables to an unaffiliated special purpose trust which would issue fixed-rate certificates evidencing undivided fractional interests in the pool of receivables. The certificates would be divided into two classes, Class A and Class B.

The Class A certificates would represent 90 percent of the pooled assets and would be sold by an investment bank in private placements to institutional or otherwise accredited investors. The Class B certificates would represent 10 percent of the pooled assets and would be retained by the bank. The rights of the Class B certificateholders to receive payments would be subordinate to the rights of the Class A certificateholders, in the event of defaults or delinquencies on the underlying auto receivables. The Class A certificateholders would also be protected by a "subordination spread account" of up to 5 percent of the outstanding pool balance, which would be funded by an initial 2 percent deposit from the bank and, thereafter, from amounts otherwise distributable to the Class B certificateholders.

To the extent that defaults on the auto receivables exceed the amount of protection afforded by the Class B certificates and the subordination spread account, the Class A certificateholders would bear that risk of loss. The Class A certificateholders would not have recourse to the bank, other than in its capacity as holder of the Class B certificates. The bank would act as servicer for the pooled auto receivables pursuant to a subservicing agreement with the master servicer, ***.

Analysis

The bank's proposal is similar to numerous proposals approved by the OCC in which national banks have used asset securitization as a means of selling or borrowing against their mortgage or other loan assets. *See, e.g.*, Interpretive Letter No. 540 (December 12, 1990) *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (credit card reeceivables), Interpretive Letter No. 418 (February 17, 1988) *reprinted in* 1988-1989 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 85,642 [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,642 (mortgage assets); Interpretive Letter No. 417 (February 17, 1988) *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,641 (mortgage assets); Interpretive Letter No. 416 (February 16, 1988) *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (leases and motor vehicle installment sales contracts); Interpretive Letter No. 388 (June 16, 1987) *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (mortgage assets).

As explained in these interpretive letters, the use of asset securitization to accomplish the sale of a bank's loans or as a vehicle for borrowing against them is considered a permissible means by which a national bank may exercise its power to negotiate evidences of debt, or its authority to borrow money and pledge its assets as collateral. *See* 12 U.S.C. 24 (Seventh) (granting national banks express power to discount and negotiate evidences of debt); Interpretive Letter No. 378 (March 24, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,602 (discussing national banks' authority to borrow money). Alternatively, the use of the securitization form to transfer bank loans has been considered a separate activity that is authorized as part of the business of banking under the incidental powers clause of 12 U.S.C. 24 (Seventh). In *Securities Industry Association v. Clarke*, 885 F.2d 1034 (2nd Cir. 1989), *cert. denied*, 110 S. Ct. 1113 (1990), the United States Court of Appeals for the Second Circuit upheld the OCC's decision that a national bank's issuance and sale of mortgage-backed pass-through certificates was authorized under the national banking laws.

The bank's proposal is within the above precedents and does not present any new legal issues. Because all of the activities proposed for the bank are authorized as part of the business of banking, it is not necessary to consider whether the restrictions on certain bank securities activities that are contained in the Glass-Steagall Act would be applicable. *See Securities Industry Association v. Clarke*, 885 F.2d at 1050 (Glass-Steagall Act prohibitions do not apply to activities authorized as part of the business of banking). In addition, the fact that the bank will not participate in any public distribution of the certificates, which will be privately placed by an investment banker, provides an independent basis for concluding that the bank's activities would not be subject to the Glass-Steagall Act's prohibitions on securities underwriting and dealing. *See* Interpretive Letter No. 540, *supra*.

One final point, which does not affect the legal permissibility of the transaction, concerns the bank's proposed retention of the subordinate Class B certificates. From the information that you have provided, it appears that the bank expects to account for the overall transaction as a sale of assets. The bank is advised that if it retains the subordinate Class B certificates, it would be required to account for the transaction as a borrowing rather than a sale under applicable regulatory accounting principles.

Under the general rule for "sales of assets" provided in the Instructions for the Consolidated Reports of Condition and Income (Call Report Instructions), the transfer of a bank's loans is to be reported as a sale only if the transferring bank "retains no risk of loss from the assets transferred resulting from any cause . . ." Call Report Instructions, Glossary — Sales of Assets: General Rule

The instructions specifically address transfers to special or limited purpose entities that are not technically affiliated with the seller (such as the trust in the bank's proposal), stating that "regardless of the legal structure of the transaction, if the risk of loss is retained by the seller, either directly or indirectly, the transaction is to be reported as a borrowing by the seller even if the sale to the special purpose entity is stated as being without recourse."

In a senior/subordinate structure, such as the one proposed by the bank, the subordinate class absorbs more than its proportionate amount of the total losses from the whole asset pool. In the event of defaults or delinquencies on the underlying assets, the rights of the subordinate class to receive its share of the payments are subordinate to the rights of the senior class. The subordinate class is a form of credit enhancement that is designed to protect the senior class from all or a portion of the credit risk associated with the transferred assets. Thus, when a bank sells the senior class and retains the subordinate class, the bank retains risk of loss from the transferred assets and is required to report the asset transfer as a borrowing.[1] In addition, the fact that the bank in this case would provide the initial funding for the subordination spread account raises a separate question as to whether risk of loss would be retained from the transferred assets.

Accordingly, notwithstanding the bank's description of the transfer as being "without recourse," under the proposed structure the bank would be required to continue reporting the full amount of the auto receivables on its balance sheet. Regulatory capital would be required for the assets as though they had not been transferred. *See* 12 CFR 3. *See also* 12 CFR 32.107(a) (sold loans may be removed from selling bank's lending limit only if the transfer results in a pro rata sharing of the credit risk).

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

[1]One of the earliest OCC interpretive letters addressing the securitization of bank mortgage assets considered a national bank's use of a senior/subordinate structure. *See* Interpretive Letter No. 92 (April 26, 1979), *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,167. In that letter the OCC stated that the transaction would be treated as a sale of assets notwithstanding the fact that the selling bank proposed to retain a subordinate class of pass-through certificates. The rules governing the regulatory reporting of bank asset transfers have since been revised and clarified, as described above, and the accounting treatment described in this interpretive letter is no longer applicable. *See* Federal Financial Institutions Examination Council, request for Comment, 55 FR 26766, [illegible] (June 29, 1990) (describing bank regulatory agencies' treatment [illegible] recourse arrangements [illegible]).

Investment Securities Letters

62—January 3, 1992

This letter is in response to your recent inquiry on behalf of *** (bank), in which you requested a clarification from the Office of the Comptroller of the Currency (OCC) on the issue of line-item disclosure of bank management fees charged to collective investment funds organized pursuant to 12 CFR 9.18(a)(2).[1] You stated in your letter that your client has a 9.18(a)(2) fund invested principally in real estate debt obligations and that the plan provides for the bank's management fee to be charged to the fund and its liquidating accounts. In the course of an examination of the bank, the issue of line-item disclosure of management fees in account statements to participating employee benefit accounts was raised.

In your letter, you discussed existing regulations and several prior OCC precedent letters which, in your view, do not provide a clear-cut answer to the bank's situation. You stated that while Fiduciary Precedent 9.5330 indicates that if a fiduciary management fee is charged to the fund, "the actual dollar amount of fees incurred should be stated as a separate line item in the periodic statements to fiduciary account parties in interest," recent OCC precedent letters appear to take a different posture. You cited a recent OCC analysis of line-item disclosure of bank management fees contained in Trust Interpretation No. 242 (1990) to support the proposition that such line-item disclosures should not be required.

Discussion

Fiduciary Precedent 9.5330 states in relevant part that:

> A fiduciary has a duty to fully and properly account to the client for assets entrusted to it. To merely disclose that a management fee or investment adviser fee, authorized by this office pursuant to 12 CFR 9.18(c)(5), has been charged to a collective fund is inadequate. . . . Mere disclosure in fee schedules, account statements and financial statements that a fee of X percent is charged is not adequate. The actual dollar amount of fees incurred should be stated as a

[1]A collective investment fund organized pursuant to 12 CFR 9.18(a)(2) is a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

separate line-item in the periodic statements to fiduciary account parties in interest.

In a similar vein, Fiduciary Precedent 9.5317 requires that "[t]he investment adviser fees charged to the fund must be listed as a separate line-item on participating account statements and in the annual financial statement for the fund. . . ." These Fiduciary Precedents would appear to require line-item disclosure of management fees. The OCC recently reexamined these Fiduciary Precedents and decided not to require line-item disclosure of the dollar amounts of the above fees charged to each account, unless such disclosures are required by state law.

Early Interpretations

In Trust Interpretation No. 217 (1989), the OCC took the position that a fiduciary duty to disclose advisory fees exists generally for accounts under the common law of trusts but that such disclosure might not be necessary for accounts subject to the Employee Retirement Income Security Act (ERISA). The OCC stated that "[t]he responsibility to fully and accurately disclose the dollar amount of such fees and expenses arises from the fiduciary duties owed to the settlor or beneficiary." *Id.* This duty arises, we noted, because the interests of a fiduciary could compete with the interests of the beneficiaries. While this conflict is not *ipso facto* impermissible, we stated at the time that a duty to account to beneficiaries still exists and that this duty is so strong that it has been found by courts to be unwaivable. Concerning the difficulty of arriving at an exact calculation of management fees for line-item disclosure purposes, we said at the time that:

> It is the corporate fiduciary that has determined, usually for its own benefit, that fiduciary fees will be charged at the mutual fund level or even the collective fund level. Having made this decision, the fiduciary can not now say it lacks the means to properly inform and account to the parties at interest. Systems capabilities to make dollar and cents disclosure should be in place at the time the fiduciary decides to charge fees at the investment level in lieu of fiduciary fees being charged at the account level.

Id.

In September, 1989, the OCC issued an additional Trust Interpretation (Trust Interpretation No. 235) on this issue in response to an inquiry concerning trusts that held shares of an investment company group for which an affiliate of the bank is the investment adviser. The bank waived a portion of its trustee's fees but charged the affiliate adviser's fee instead. In Trust Interpretation No. 235 (1989), the OCC took the fiduciary duty concept a step further and stated that:

> The parties in interest have a right to know the full amount of fees and expenses charged by the bank and its affiliates for administration of the account. Failure to provide such information is a breach of the bank's fiduciary duty . . . The supervisory responsibilities of the OCC restrict our ability to waive, exempt, or not enforce this fundamental fiduciary duty.

Thus, in Trust Interpretation No. 235, the OCC appeared to be taking the position that the fiduciary had a duty to provide line-item disclosure. The OCC further emphasized that fiduciary principles do not allow "secret" or "hidden" fees and that liability for nondisclosure of applicable fees could result.

The OCC elaborated on what is meant by "line-item disclosure" in Trust Interpretation No. 235. It stated that what is intended "is that the dollar amount of fees (and/or expenses, such as custody or recordkeeping) attributed to an account investing in the related mutual fund be specifically stated in the account paid by the mutual fund to the fiduciary and its affiliates should be stated."

Recent Interpretations

The OCC's views toward line-item disclosure of management fees have since evolved as the agency has further studied the issue.

The OCC has recently indicated in Trust Interpretation No. 242 (1990) that "[a]s a matter of policy, the OCC will not require, on a *per se* basis, such 'line-item' disclosure." That interpretation was issued in response to a request for clarification of the OCC's views regarding line-item disclosure. The bank making the interpretation request was under the belief that a bank trustee must, without exception, disclose the dollar amount of fees and expenses attributed to a trust account investing in mutual funds advised by that bank. The bank making the inquiry believed that calculating the specific dollar amount of fees and expenses would be administratively difficult and place the bank, and others similarly situated, at a competitive disadvantage with nonbank trust organizations.

We believe that Trust Interpretation No. 242's rationale is applicable to the instant situation as well. In extending the rationale of Trust Interpretation No. 242 to the instant situation, we do not intend to minimize a bank's fiduciary duty in a situation such as the one you have described to make understandable disclosure of relevant fees. In fact, we also indicated in Trust Interpretation No. 242, and reiterate here, that if local law

requires such disclosure of fees, a bank would be subject to that local law requirement.

Lee Walzer
Attorney
Security and Corporate Practices Division

* * *

63—February 27, 1992

This is in response to your inquiry regarding the policy of the Office of the Comptroller of the Currency (OCC) with respect to the use of an abbreviated information statement (an AIS) in connection with a merger transaction[1] involving one or more national banks. The OCC will permit the use of an AIS in the following three situations involving unregistered banks undergoing merger, if a shareholder or group of shareholders owns a sufficient percentage of the shares to determine the outcome of the shareholder vote on the merger transaction, and has committed to voting in favor of the merger.

A. Cashout of Minority Shareholders

An AIS will be allowed in connection with a merger transaction, if the minority shareholders of the bank will be paid in cash for their shares. The AIS must contain the following disclosures as required under 12 CFR 11:

(1) a statement in bold face type on the first page of the AIS indicating the percentage and number of shares held by the shareholders who favor the merger and that the majority shareholder(s) have the ability to effectuate the transaction without the vote of the minority shareholders;

(2) a discussion of the material terms of the merger, the reasons for the merger, the general effect of the merger on the rights of existing majority and minority shareholders, and a copy of the merger agreement. *See* 12 CFR 11.590, Item 14(a);

(3) a discussion of dissenters' rights and the valuation methods used by the OCC to estimate the value of a bank's shares when it is involved in a merger transaction and a copy of 12 U.S.C 214a, 215 or 215a and the OCC's banking circular on stock appraisals;

(4) an appropriate disclosure regarding the eleventh circuit's recent holding in *Lewis v. Clark [sic]*, 911 F.2d 1558 (11th Cir. 1990);

(5) a discussion of how the per share exchange price for stock held by the minority shareholders was determined;

(6) a discussion of the bank's dividend history for each of the past five fiscal years (or the life of the bank, if less). *See* 12 CFR 11.590, Item 14(b)(5) and 11.831, Instruction 2;

(7) a discussion of the book value of the bank's stock for each of the past five fiscal years (or the life of the bank, if less). *See* 12 CFR 11.590, Item 14(b)(5);

(8) the following selected financial data for each of the past five years (or the life of the bank, if less) set forth in comparative columnar form; (a) net interest income; (b) other operating income; (c) provision for loan and lease losses; (d) income (loss) from continuing operations; (e) income (loss) from continuing operations per common share; (f) total assets; (g) long-term obligations and redeemable preferred stock and cash dividends declared per common share; and (h) such other items which the bank believes would enhance an understanding of and would highlight other trends in their financial condition and results of operations. *See* 12 CFR 11.590, Item 14(b)(5) and 12 CFR 11.831. If the book value of the shares held by the minority shareholders of the national bank (excluding those shares held by officers and directors[2]) is less than $100,000, the bank may disclose the financial data required by 12 CFR 18 for the preceding five fiscal years and interim periods in lieu of the financial information described in this paragraph;

(9) financial statements for the bank as required by 12 CFR 11.590, Item 15. If the book value of the shares held by the minority shareholders of the national bank (excluding those shares held by officers and directors[3]) is less than $100,000, the bank may disclose the

[1] As used in this letter, the terms "merger transaction" or "merger" include mergers and consolidations permitted under 12 U.S.C. 214a, 215, and 215a.

[2] Shares held by the bank's directors and executive officers are not counted towards the $100,000 because of the substantial information known by these insiders about the bank.

[3] *See* footnote 2, *supra*.

financial data required by 12 CFR 18 for the preceding five fiscal years and interim periods in lieu of the financial information described in this paragraph;

(10) information on certain beneficial owners of the bank as required by 12 CFR 11.590, Item 5(d) and 11.843(a)(1);

(11) disclosure of the interests of certain persons in the merger as required by 12 CFR 11.590, Item 4;

(12) the standard disclosure on OCC approval of the merger as set forth in Banking Circular 230; and

(13) such other information as may be necessary to make the materials not false or misleading.

B. Shareholders of a Receiving Bank

An AIS will be allowed in connection with a merger transaction where the bank is the resulting bank, and the minority shareholders will not receive cash or shares in exchange for their present shares in connection with the merger. The AIS must contain the following disclosures as required under 12 CFR 11:

(1) a statement in bold face type on the first page of the AIS indicating the percentage and number of shares held by the shareholders who favor the merger and that the majority shareholder(s) have the ability to effectuate the transaction without the vote of the minority shareholders;

(2) a statement that minority shareholders do not have any dissenters' rights under 12 U.S.C. 215a; and,

(3) a discussion of the material terms of the merger, the reasons for the merger, the general effect of the merger on the rights of existing shareholders (including the impact of the merger on the minority shareholders' interest in the bank, *e.g.*, dilution of percentage ownership, if applicable), consideration to be given to the shareholders of the target bank,[4] and a copy of the merger agreement. *See* 12 CFR 11.590, Item 14(a) and 14(b).

[4]"Target bank" refers to the bank being merged into the receiving bank.

C. Minority Shareholders Receive Shares and Book Value of Minority Shares is Less than $100,000

An AIS will be allowed in connection with a merger transaction, if the book value of the shares held by the minority shareholders of the national bank (excluding those shares held by officers and directors[5]) is $100,000 or less, and the minority shareholders of the bank will receive shares in the resulting bank. The AIS must contain the following disclosures as required under 12 CFR 11:

(1) a statement in bold face type on the first page of the AIS indicating the percentage and number of shares held by the shareholders who favor the merger and that the majority shareholder(s) have the ability to effectuate the transaction without the vote of the minority shareholders;

(2) a discussion of the material terms of the merger, the reasons for the merger, the general effect of the merger on the rights of existing shareholders (including the impact of the merger on the minority shareholders' interest in the bank, *e.g.*, dilution of percentage ownership, if applicable), consideration to be given to the shareholders of the bank and how the exchange ratio was determined, and a copy of the merger agreement. *See* 12 CFR 11.590, Item 14(a) and 14(b);

(3) a discussion of dissenters' rights and the valuation methods used by the OCC to estimate the value of a bank's shares when it is involved in a merger transaction and a copy of 12 USC 214a, 215 or 215a and the OCC's banking circular on stock appraisals;

(4) a discussion of the dividend history of all banks involved in the merger for the past fiscal five years (or the lives of the banks, if less), and a statement of expected dividend policies of the resulting bank. *See* 12 CFR 11.590, Item 14(b)(5) and 11.831, Instruction 2;

(5) a tabulation in columnar form showing the existing capitalization of the banks involved in the merger, and the pro forma capitalization of the resulting bank. *See* 12 CFR 11.590, Item 14(b)(4);

(6) a discussion of the book value of the merging banks' shares for the past five fiscal years (or

[5]*See* footnote 2 *supra*

the [illegible] of the banks (if less) and the pro forma book value of the resulting bank's shares. *See* 12 CFR 11.590, Item 14(b)(5) and (6).

(7) financial data required by 12 CFR 18 for all banks for the preceding five fiscal years and interim periods.

(8) information on certain relationships and related transactions for the proposed directors and executive officers of the surviving bank as required by 12 CFR 11.844 (with the exception of the information required under section 11.844(c), Instructions 2D and 3. *See* 12 CFR 11.590, Item 14(b)(3) and Item 6;

(9) information on certain beneficial owners of the bank as required by 12 CFR 11.590, Item 5(d) and 11.843(a)(1) and on directors' share ownership as required under 12 CFR 11.590, Item 5(e) and 11.843(a)(2) for the bank. Provide pro forma information for the beneficial owners and directors on their share ownership in the resulting bank;

(10) disclosure of the interests of certain persons in the merger as required by 12 CFR 11.590, Item 4;

(11) the equivalent share information required under 12 CFR 11.590, Item 14(b)(7), including the primary and fully diluted pro forma per share data in conformance with Instruction 1;

(12) a discussion of the features and rights appurtenant to the securities received, and a comparison of such features and rights to those of the securities surrendered;

(13) the standard disclosure on OCC approval of the merger as set forth in Banking Circular 230; and,

(14) such other information as may be necessary to make the materials not false or misleading under the relevant circumstances.

As with all securities disclosure documents, the obligation to make accurate disclosures of the material facts in connection with an AIS rests with the bank, and the OCC will take whatever action it deems necessary if the AIS is false or misleading in any respect.

Ellen Broadman
Director
Securities and Corporate Practices Division

. . .

64—March 27, 1992

This is in response to your letter dated December 3, 1990, to the Office of the Comptroller of the Currency (OCC) and subsequent conversations with OCC staff wherein you sought our opinion regarding certain features of a stock option plan proposed by the bank.[1] In your letter, you stated that the bank was preparing to implement a stock option plan which contained the following features: (1) exercise of options using existing stock held by the employee as payment; (2) exercise of options using some of the stock to be issued in payment for the remaining stock to be issued; and (3) the redemption of stock appreciation rights with stock. Specifically, you requested that the OCC confirm your opinion that the stock option plan as proposed does not violate 12 U.S.C. 83 which generally prohibits national banks from purchasing or holding their own capital stock. You also requested that the OCC confirm your opinion that the proposed redemption of stock appreciation rights with stock does not violate provisions of national banking law prohibiting banks from issuing stock for less than par value or for no consideration.

Facts

The bank proposes to establish an Incentive Stock Option Plan, Nonqualified Stock Option Plan, and Stock Appreciation Rights Plan (collectively, the plan). The plan is intended as an incentive to bank employees to excel in the performance of their duties with the eventual goal of advancing the interests of the bank. The plan defines the term "eligible employees" to include "key management employee[s] of the bank, or any subsidiary of the bank, which employee[s] may be . . . officer[s] or directors[s], or both." The plan will be administered by the Stock Option Plan Committee (committee) comprised of the board of directors of the bank. Unlike an employee stock ownership plan, the committee will not hold any assets or own any shares of the bank's stock. It is our understanding that the committee, in its sole discretion, will authorize the bank to offer options to those directors or officers whom the committee has determined as eligible to become plan participants. The options and the stock appreciation rights are exercisable for the term of not longer than ten years from the date of the grant.

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[1]The following interpretation relates solely to the specific legal issues presented in your correspondence. The OCC does not review or approve the accuracy or adequacy of the terms of stock option plans. While this letter contains discussion of alternative entries that could be used in accounting for stock option plans, this letter also does not purport to provide an opinion on the accounting the bank may propose to use for these transactions. *See* Accounting Policy Bulletin (APB) Opinion 25, which treats as compensation expense charges for stock option plans. Accordingly, we simply assume in this case that any compensation expense involved would be charged to the statement of operations.

Stock-for-Stock Exercise

The plan provides for the exercise of options using stock the employee already owns as payment for the stock made available under the plan (stock-for-stock exercise method). In your letter, you provided the following example:

> . . .[I]f a participant wishes to exercise options for two shares of stock with an exercise price of $10 per share, and at the time of exercise the stock is trading for $20 per share, the participant could elect to pay for the purchase of two shares (the aggregate exercise price of which is $20) with one share of stock already owned by the participant (the market value of which is $20).

You also assumed a par value of $5 per share and an original purchase price of $10 for the participant's already owned share. The accounting for such a transaction, contemplating the net issuance of one additional share of stock, would involve a $5 credit of par value, a further $5 credit to surplus, and a $10 debit either to operations or directly to retained earnings, depending on whether the transaction involves the payment of compensation. The entries on the bank's capital accounts would, in essence, be offsetting, with no net increase in capital. We note, however, that these entries also have the effect of transferring $10 from retained earnings to the par and surplus accounts.[2]

You have requested that the OCC confirm your opinion that the stock-for-stock exercise does not violate 12 U.S.C. 83. In your letter, you argue that a stock-for-stock exercise simply increases the number of outstanding shares without a reduction in capital, and therefore, does not violate section 83.

Cashless Exercise

The plan also allows what you have described as a cashless exercise of options. In your letter, you explained that a cashless exercise occurs where, ". . . a participant may advise the [B]ank to withhold from the shares to be issued upon exercise that number of shares having a fair market value equal to the sum of the option exercise price." In essence, the participant would pay the exercise option price with shares of bank stock issued under the plan, but valued at a presumably higher market price.

Under your analysis, assuming a shareholder wished to exercise 10 options, with a market price of $20 per share, option price of $10 per share, and a par value of $5, the Bank merely would withhold in payment half of those shares that it would have issued. The accounting involves a net credit to both par value and surplus accounts of $25 to reflect the issuance of five shares. A debit of $50 to operations or directly to retained earnings, depending on whether the transaction involves the payment of compensation, also would be necessary. Again, the entries on the bank's capital accounts would be offsetting, with no net increase in capital.[3]

In your letter, you requested that the OCC confirm your opinion that payment through a cashless exercise does not violate section 83. Again, you have argued that the method would not require the bank to experience a withdrawal of capital or a reduction in total stockholders' equity.

Stock Appreciation Rights

The plan also provides for the issuance and redemption of stock appreciation rights (SARs). SARs constitute the right to receive the appreciation in a stock's value over a period of time and may be quantified as the difference between the value of the stock at the time an SAR is granted and the fair market value of the stock upon exercise. The plan states that the appreciation due a participant shall be payable either in cash, or in shares of bank stock if requested by the participant, with the consent of the committee.

If the bank redeems an appreciation right with its own stock, the number of shares to be issued shall be determined by dividing the amount of appreciation by the fair market value of a share of bank stock on the date of the exercise of the SAR. The plan provides that no fractional shares shall be issued upon the exercise of an SAR. In your letter, you provided the following example:

> . . .[A]ssume SARs with respect to 10 shares [$5 par value] were issued with a grant value of $10 per share. If the stock is trading at $20 per share at the time the participant elects to exercise such SARs, the participant would be entitled to receive either $100 in cash ($10 per share appreciation for each of the ten shares) or five shares of the bank's stock (with an aggregate fair market value equal to the $100 aggregate appreciation).

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[2]Assuming in this example that an option holder paid cash for two shares, the bank would debit cash $20, credit par value $10, and surplus $10, for a net increase to capital of $20. There would be no reduction to retained earnings

[3]Assuming instead that the option holder wished to pay cash for the exercise, the bank would debit cash $100, credit par value $50 and surplus $50 to reflect the sale. Capital would increase by $100

The bank would account for this transaction by debiting operations by $100 and creating as a liability account a deferred compensation account. That account would be credited by the same amount to reflect the bank's obligation on the SAR. At the time of exercise, the bank would debit the deferred compensation account $100 and credit $50 to both the par value and surplus accounts.[4]

You have requested that the OCC confirm your opinion that the issuance of stock upon exercise of an SAR does not constitute the issuance of stock without consideration, but instead is analogous to the payment of a cash bonus to the participant who, upon exercise, simultaneously returns the cash bonus as payment for the stock. You stated that issuing stock rather than cash in satisfaction of the exercise of an SAR results in an increase in the bank's common stock and surplus accounts.

Analysis

Exercise of Options

Section 83 on its face appears absolute in its prohibition on banks purchasing or holding their own shares.[5] Section 83 was enacted in 1864 and there is no legislative history to indicate Congress's intent in enacting this provision.[6] There exist a number of court cases and administrative interpretations of section 83, some of which recognize instances where the section 83 prohibition may have limited exceptions, but none addresses the particular question you have raised.

Courts have interpreted this section to be intended to prevent impairments of bank capital to protect depositors and creditors, consistent with the concurrent requirements relating to shareholder liability in 12 U.S.C. 55. In *Dietrick v. Greaney*, 309 U.S. 190, *rehear'g den.*, 309 U.S. 697 (1940), the Supreme Court stated that section 83 ". . . prohibits the purchase by a bank of its own shares of stock and their retention when purchased. . ." The Court read section 83 in the context of the entire National Bank Act which, among other things, prohibits the "impairment of . . . capital through its withdrawal by payment of dividends or otherwise. . ." in violation of 12 U.S.C. 56. It recognized that the Comptroller could require "any bank whose capital has become impaired. . . to make up the deficiency by assessment of its shareholders. . . ." 309 U.S. at 194. The Court stated, in light of this comprehensive statutory scheme that the National Bank Act presented, that "[t]he obvious purpose of prohibiting the purchase by a bank of its own stock is to prevent the impairment of its capital resources and the consequent injury to its creditors in the event of insolvency." *Id.* at 195. *See also Union Bank and Trust v. Pay,* 86 S.D. 127, 192 N.W.2d 130 (1971).[7]

Section 83 does not contain definitions of the terms purchaser and holder. Common usage of the terms contemplates possession of more than a momentary duration and it is reasonable in this instance to conclude that the purchase or holding of shares that section 83 prohibits is for more than a moment in time. This commonsense reading of these terms is consistent with the Supreme Court's reading of the National Bank Act in *Dietrick*. In that context, the prohibition of section 83 clearly is directed at the permanent damage to a bank's core capital that a purchase and holding of its shares represents, and the consequent damage to the bank's depositors and creditors.

If one is to read the section 83 prohibition to comprehend the possession of shares, even for a moment in time, then one faces an immediate conflict between this provision and 12 U.S.C. 59. Section 59, which was enacted contemporaneously with section 83, permits reductions of capital with shareholder and OCC approval.[8] As explained below, it is a common corporate

[4]Assuming the holder instead sought a cash payment, the bank would debit deferred compensation by $100 and credit cash by $100.

[5]Act of June 3, 1864, c. 106, section 35, 13 Stat. 110. Section 83 provides, in relevant part:

> No [national banking] association shall . . . be the purchaser or holder of any [share of its own capital stock], unless such . . . purchase shall be necessary to prevent loss upon a debt previously acquired in good faith.

[6]By its own terms the statute also prohibits banks from lending on the security of their own shares. This prohibition has been interpreted to be based on the view that "a national bank's collateral protection should be represented by assets supported from sources other than the bank itself. Obviously, this policy is defeated where the bank accepts as collateral its own capital instruments." Letter dated August [illegible] from [illegible], Regional Counsel (unpublished). [illegible] purchasing/holding prohibition [illegible] share [illegible] bank [illegible] be compromised to the detriment of depositors and other creditors.

[7]Similarly, Interpretive Ruling 7.6030(c), 12 CFR 7.6030(c), prohibits a national bank from making a loan secured by its own capital notes or debentures. The ruling states, in support, that "[s]uch notes and debentures must be subordinated to the claims of depositors and other creditors of the issuing bank, and are, therefore, capital instruments within the purview of 12 U.S.C. 83."

[8]Act of June 3, 1864, c. 106, section 13, 13 Stat. 103. Section 59 provides, in relevant part:

> Any association formed under this chapter may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this chapter to authorize the formation of associations, . . . and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two thirds of the shares of each class of stock outstanding, voting as classes.

practice for banks to purchase and retire their shares under section 59. In order to give effect to both provisions, there must be times when banks may reduce their capital subject to the conditions of section 59 without prompting an impermissible purchase and holding of stock under section 83. A restrictive reading of the purchase and holding language of section 83 to cover purchases and simultaneous retirements would needlessly threaten the permissibility of a recognized corporate tool. By the terms and plain language of these statutes, when read *in pari materia*, there may be reductions of bank capital in certain circumstances, but not through the bank's purchase or indefinite holding of its own stock.[9]

The OCC has consistently interpreted sections 59 and 83 *in pari materia* to give effect to both provisions. While the OCC has interpreted section 83 to bar a national bank from holding treasury stock, it also has held that section 83 does not bar a national bank from acquiring a portion of its stock for immediate retirement in connection with a reduction in capital authorized under section 59. *See* letter dated June 18, 1976, from Martin Goodman, Associate Chief Counsel (unpublished) (national bank is prohibited from holding treasury stock) and letter dated April 13, 1978, from M.B. Adams, Regional Administrator of National Banks (unpublished) (12 U.S.C. 83 prohibits bank purchases of its own stock except for purpose of reducing capital under 12 U.S.C. 59).[10] The Board of Governors of the Federal Reserve System similarly has determined that the prohibition of section 83, made applicable to state-chartered member banks by 12 U.S.C. 324, does not apply to the acquisition by a bank of its outstanding shares for the purpose of retirement.[11]

Transactions involving the repurchase and retirement of national bank shares are common enough that the OCC has adopted administrative procedures to provide for such transactions as a matter of course. The OCC's *Comptroller's Manual for Corporate Activities* (1987) contemplates a number of transactions involving the reduction of capital through retirement of shares and has published sample documents to accomplish this task.[12] Indeed, transactions involving the redemption of options do not even fall within the requirements of section 59 for shareholder approval.[13]

There appears to be little chance that the plan and its proposed option exercise payment methods would present the dangers that section 83 was intended to prevent, that is impairment of capital to the detriment of creditors. Because of the interplay between sections 59 and 83, it is reasonable to conclude that the transaction falls within the scope of permissible repurchases and retirement of stock that the OCC has recognized.

Even if section 83 could reasonably be read to apply to the transaction that you have proposed, because there is, literally, a purchase by the bank of its shares, there would be no impairment to the bank's "capital" for purposes of that provision. The impairment of capital to which the Supreme Court has held that section 83 is directed must be read in light of the definition of "capital" that Congress enacted in 12 U.S.C. 51c. That provision defines the term "capital" for purposes of other provisions of law relating to the capital of national banks, including sections 59 and 83.[14] Prohibited and permissible reductions of capital in such circumstances are limited to transactions affecting "unimpaired common stock" and arguably do not extend to retained earnings, which rise and fall as a bank encounters operating profits or losses. Thus a bank may reduce the retained earnings account, which constitutes bank capital for certain purposes, without violating section 83.

A review of the accounting for these transactions confirms that noncash redemptions, like the clearly permissible cash exercise of an option, present no impairment of capital. With a cash payment, the bank would increase the amount of its stock outstanding by the number of options exercised, with corresponding changes to stated capital and surplus. A net increase to capital results. In contrast, a cashless or stock-for-stock

[9]This reasoning is unaffected by the holding of *Bloomington National Bank v. Telfer*, 916 F.2d 1305 (7th Cir. 1990) (12 U.S.C. 83 prohibits a reverse stock split designed solely to merge out minority shareholders, notwithstanding availability of 12 U.S.C. 59). The court in *Bloomington* expressly "decline[d] to answer the broader question of whether section 83 prohibits *any* reacquisition by a bank of its own capital stock." *Id.* at 1308, n.4.

[10]*See also* letter dated September 29, 1980, from Richard V. Fitzgerald, Director, LASD (unpublished) (section 83 prohibits a national bank from holding its shares on an indefinite basis but does not prohibit the cancellation of shares a bank receives from its holding company.) *See also* letter dated December 31, 1979, from John G. Heimann, Comptroller of the Currency (unpublished) (national bank may not purchase its own stock as treasury shares to facilitate the eventual sale of such shares)

[11]Letter dated August 14, 1967, *reprinted in* 5 Fed. Banking L. Rep. (CCH) ¶ 94,733

[12]*See, e.g., Id.* section 32.3, Document 8, Sample Resolutions and Amendments to Articles of Association, p. 16. L ("To decrease the capital through purchase and retirement by the bank of its own shares"), *see also Id.* section 32.3, Document 10A. Notification of Change in Capital, p. 20.2 ("Reduction in outstanding common stock through purchase of shares")

[13]Bank shareholders must, however, approve any proposed increase in capital in connection with the adoption of the plan. *See* 12 U.S.C. 57 and 12 CFR 5.46(d)(5)

[14]Section 51c provides that "[t]he term capital as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired

exercise will involve restatements of the bank's capital accounts to account for simultaneous increases and reductions to par value and surplus. As a result, there is no change in total capital, only an increase in the number of shares outstanding. State differently, a noncash exercise will result in a foregone opportunity to sell additional stock and increase capital. This difference does not, however, represent an impairment of capital.

There is another difference in the accounting treatment in a stock-for-stock or cashless exercise that is not presented in the case of a cash payment. The accounting for noncash exercises recognizes that, at least for a moment in time, the bank's stated capital account will be debited and, unless restored, apparently impaired. The remaining accounting debits and credits, however, have the immediate effect of restoring the bank's capital accounts to their original level. The incidental and momentary impact of these accounting entries cannot reasonably be concluded to impair the bank's capital accounts, for the contingent liabilities these options represent already should be available to creditors examining the bank's financial statement, if fairly presented.

Accordingly, it is my opinion that the noncash exercise features of the plan do not controvert the requirements of section 83.

Stock Appreciation Rights

The OCC has not objected to proposals by national banks to issue options to purchase common stock with an SAR feature. SARs are usually attached to options to purchase common stock through employee incentive plans. Inherent in the power to issue stock is the power to issue related interests, such as options, warrants, and stock appreciation rights. There is an argument that OCC regulations presume a national bank's inherent authority to issue SARs. Twelve CFR 11.102(p) defines the term "option" as "any option, warrant, or right other than those issued to security holders on a pro rata basis," which arguably is broad enough to include SARs. Twelve CFR 11.842(b)(1) and (b)(4) in fact describe the disclosure requirements for stock options issued with SARs.

In your letter you stated that issuing bank stock rather than cash in satisfaction of the exercise of an SAR results in an increase in the bank's common stock and surplus accounts. Generally, this proposition is correct so long as the stock is issued at a market price that equals or exceeds par value. National banks may not sell stock at less than par value. *See* 12 U.S.C. 52. Using your example, issuance of stock instead of payment of cash for SAR redemptions will result in the bank building its capital accounts. Accordingly, it is my opinion that a national bank may issue stock in redemption of SARs so long as the stock is issued at a market price that exceeds par value. We suggest that you review the proposed plan for compliance with this condition.

Donald N. Lamson
Assistant Director
Securities and Corporate Practices Division

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Trust Interpretations

264—September 23, 1991

You requested our opinion concerning a proposed master collective investment fund that would be owned by subcollective investment funds. *** operates a number of subcollective investment funds that will invest in the master fund (MF). Other than some cash, the only asset held by the subfunds will be units of the MF. Certain of these subfunds investing in the MF allow security lending transactions. Others, however, do not permit securities lending activities.

It is our considered opinion that the proposal results in certain inequities between the classes of subfunds and their unitholders. The proposal as structured results in the unitholders of the MF having a disproportionate interest in all assets and liabilities of the MF and its earnings and losses. We find the proposal objectionable since it does not conform with 12 CFR 9.18 and sound fiduciary principles.

Under the MF arrangement, it is proposed that security lending income or loss will be allocated only to the subfund(s) authorized to engage in security lending. This allocation will be performed by issuing (or redeeming) units of the MF to the appropriate subfund. The number of units issued or retired will be based on the MF's income or loss resulting from security lending activities. Although the security lending income is earned by the MF as a whole, the income is disbursed to only the subfund authorized to engage in security lending. In essence, the participating lending subfunds will receive a cash distribution from the MF which they immediately reinvest in the MF. The issuance of the new units also reduces the relative ownership interest of the nominating subfund owners in the net assets of the MF. This decrease is equal to their proportionate interest in the income from security lending.

In reality, the bank is creating two different ownership classes for the Master Fund — dual securities or multi-

ple unit classes with different risks, limitations, and rights to security lending income. In other words, only the lending subfunds participate in security lending gains or losses. Further, only the lending subfund is subject to credit risk involving securities lending activities. However, because the Master Fund has only one class of ownership interest it implies that each holder has equal rights and interests in the operations and net assets of the MF.

Effectively, the bank's proposed accounting results in each subfund retaining the same relative ownership interest in the net assets of the MF that would result if two different classes existed. However, changes in the status of each class resulting from earnings is not disclosed in the various components of the fund's equity accounts. In addition, it creates the appearance that securities lending activities and the related income or loss is applicable to all unitholders of the MF.

The materials submitted also raise several questions concerning the accounting for security lending by a collective investment fund. These questions specifically concern the accounting for the collateral received in connection with security lending activities, and how the related income earned should be recorded.

With respect to the accounting for securities lending activities, any cash collateral received, or other assets received by investing the cash collateral, should be shown as an asset of the lending fund with an offsetting liability recorded for the amount due to others in conjunction with these transactions. This treatment is consistent with the accounting required by banks and investment companies, and should be followed by collective investment funds which engage in securities lending. Also, the securities loaned should continue to be included as assets of the lending fund.

In addition, we believe security lending income should be reported on a gross basis. The providers of collateral do not have a beneficial interest in the collective investment fund in which the collateral is invested. However, the amounts paid to *** and the providers of collateral should be reported as separate expenses of the fund. In addition, financial statements or condensed financial statements of the short-term investment fund for security collateral should be included with or incorporated into the financial statements of the lending collective investment fund.

William L. Granovsky
National Bank Examiner
Compliance Management Department

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265—March 19, 1992

Your letter dated September 12, 1991, is at hand.

The Office of the Comptroller of the Currency (OCC) has not developed new standards for banks to use in the valuation of guaranteed investment contracts (GICs) held in a collective investment fund (CIF). The requirements of the regulation, (see 12 CFR 9.18(b)(1)), that investments of a CIF be marked to market or valued at a fair value as determined in good faith remain in full force and effect. The OCC has determined that "cost" valuation is not fair value for GICs held in a CIF.

It is ultimately the responsibility of the board of directors that the plan contains, ". . . the method and basis of valuing assets in the fund, setting forth specific criteria for each type of asset." See 12 CFR 9.18(b)(1). This responsibility is not unlike that of the independent board of an investment company to assure that accurate net asset value is determined. A bank voluntarily makes a business decision to offer a GIC collective investment fund product. Having made the decision, it has the duty and responsibility to determine that GICs are accurately and properly valued in the administration of the CIF.

As a result of the examination process, the OCC found the administration of the bank's GIC CIF to violate 12 CFR 9.18(b)(1). The trustee was using "cost" valuation rather than "fair value." Based upon the information provided in your letter, this violation continues. In the absence of a determination by the trustee that a GIC must be prematurely liquidated, the trustee continues to value the GIC at amortized cost or "contract" value. Please note that the OCC's focus on the trustee's method of valuation should not be interpreted as our finding that all other aspects of the administration of the fund are proper nor that the valuation methodology only violates 12 CFR 9.18(b)(1).

The bank's valuation approach is narrow in scope in that it only considers the factor of premature liquidation. The current value of the GIC is only determined if the GIC is to be liquidated. The valuation method does not consider economic and credit factors on an ongoing basis. The materials presented fail to address one of the principle operational characteristics of a CIF. This is the characteristic of liquidity. Liquidity is present because of the investor's ability to purchase or redeem CIF units each valuation date. In essence the trustee is maintaining an artificial market in the underlying assets of the CIF. Specifically, with the case at hand, the bank has converted long-term illiquid debt obligations, the GICs, to a highly liquid security that can be bought and sold daily. The bank's

[illegible] being administered in a manner that permits daily admissions and withdrawals. It is this characteristic of a CIF, the constant making of a market of the fund's assets, that necessitates that the assets be valued at a fair value as determined in good faith. The failure to value accurately CIF assets at current value or at fair value has an adverse impact on the interest of participants.

We too are aware that the Financial Accounting Standard Board (FASB) is reviewing the GIC valuation issue. It is our understanding however that their study does not extend to the valuation of GICs in the context of an asset of CIF. Therefore, FASB's finding may not be determinative of the CIF valuation question. However, if FASB revises Statement No. 35 so that GICs are valued at a fair value, such as yield to maturity or at a discounted value, then it is possible that similar criteria may be considered by the OCC as adequate to be used for the valuation of GICs held by a CIF.

William L. Granovsky
National Bank Examiner
Compliance Management Department

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266—April 27, 1992

This is in reply to your letter dated April 15, 1992, concerning the administration of bond trusteeships.

Corporate trust accounts where the trustee bank does not exercise discretion would be covered by the confirmation requirements of 12 CFR 12.5(a). The trustee is not exercising discretion over the transaction when the transaction is directed. When an entity other than the trustee bank exercises investment discretion under the terms of the bond indenture, that entity should receive a confirmation within the stated time period.

Absent specific provisions in the bond indenture relieving the trustee of investment responsibility, the trustee should review the assets of the bond trusteeship at least yearly within 15 months of the previous review. See 12 CFR 9.7(a)(2). As the trustee of the indenture, the bank has the duty and responsibility to determine that the investments of the account conform to the provisions of the indenture. Certain duties and responsibilities are owed by the trustee to the bondholders. Included in these duties would be ascertaining that the investment requirements are being fulfilled. Although the bank may not be exercising investment discretion for each transaction as trustee it has fiduciary responsibilities for the investments.

William L. Granovsky
National Bank Examiner
Compliance Management Department

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267—May 21, 1992

Recently, a national bank has submitted to the Office of the Comptroller of the Currency (OCC) information distributed to the bank by *** (company) relating to an upcoming seminar sponsored by company. A copy of the materials is enclosed with this letter. Based on our review of these materials, it is our understanding that from June 14 through June 16, 1992, company is holding its annual Bank Trust Users Seminar (seminar) for fiduciaries who invest in company's funds. We also understand that company will cover all travel and lodging expenses incurred in connection with the attendance by trust department members at company's seminar. In addition to travel and lodging expenses, it appears that company is covering expenses incurred in connection with leisure activities that will be offered during the seminar such as trout fishing and golf. Notably, the seminar begins with dinner at 7:00 p.m. on Sunday, June 14, 1992, and continues from 8:00 a.m. to 9:30 a.m. on Monday, June 15, 1992. From 9:30 a.m., June 15, 1992, through June 16, 1992, at 3:00 p.m., the program for fiduciaries involves exclusively golf, trout fishing, eating, and drinking.

Company invites national bank trust departments to attend its seminar. Although company notes that the OCC has required national bank trust departments to assume seminar expenses previously paid by seminar sponsors such as company, company nonetheless offers to cover travel and lodging expenses for the above seminar, because company does not believe that the receipt by national bank trust departments of such travel and lodging expenses is contrary to OCC requirements. Specifically, company implies that the receipt of such expenses is not prohibited by Banking Circular 233, which addresses prohibitions placed on national banks who receive travel expenses for attendance at seminars offered by, or at the direction of, firms that sponsor mutual funds, contingent upon the national banks' investments in the funds of those firms. Company also recommends that national bank trust departments discuss the seminar with their trust committees and bank presidents to ensure that the banks' acceptance of travel and lodging expenses will not, from the banks' perspective, result in a conflict of

interest. Moreover, company recommends that the banks' discussions of the seminar be included in the minutes of trust committee meetings.

Please be advised that in light of Trust Interpretation No. 222, August 1989, *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 83,053, (which was issued in response to an inquiry form company's counsel regarding the receipt by national banks of such travel expenses and other benefits), company's advice to national banks regarding the OCC's views on the receipt of the above-described travel expenses is inaccurate and should be clarified. In that letter, company's legal counsel was specifically advised as follows:

> To avoid violations of 12 CFR 9.12(a), national banks should bear the cost of travel expenses associated with seminars offered by, or at the direction of, investment company managers, if bank trustees attend such seminar. Alternatively, the trust department should ensure that such arrangements are lawfully authorized by the instruments creating the relationships between the banks and their respective trust beneficiaries, court order, or local law.

Trust Interpretation No. 222 clearly states that bank trustees may <u>not</u> receive travel expenses and other benefits for attendance at trust seminars unless such arrangements are lawfully authorized by the instruments creating the relationships between the banks and their respective trust beneficiaries, court order, or local law. It is therefore inaccurate to suggest that any other receipt by national bank trust departments of such travel and lodging expenses is consistent with OCC regulations. As the OCC stated in Trust Interpretation No. 222, the receipt of such expenses is in violation of 12 CFR 9.12(a), unless lawfully authorized by the trust instrument, court order, or local law.

Please be advised that the OCC may institute appropriate remedial actions against a bank or institution affiliated parties for violations of 12 CFR 9.12(a). Accordingly, we recommend that company revise its seminar materials immediately to clarify the OCC's position and provide potential national bank seminar attendants with a copy of Trust Interpretation No. 222, in order to avoid causing, or aiding or abetting violations of 12 CFR 9.12(a). In addition, company should affirmatively advise any national banks that may have already agreed to attend the seminar of the position of the OCC stated in this letter and provide copies of this letter and Trust Interpretation No. 222.

Dean E. Miller
Senior Advisor for Fiduciary Responsibilities
Compliance Management

* * *

Structure Tables

Tables provided by the Bank Organization and Structure and the Multinational Banking departments.

Changes in the structure of the national banking system, by states, January 1 to June 30, 1992

	In operation Dec. 31, 1991	Organized and opened for business	Merged	Voluntary liquidations	Payouts	12 USC 214		In operation June 30 1992
						Converted to state banks	Merged with state banks	
Alabama	53	0	1	0	0	0	0	52
Alaska	4	0	0	0	0	0	0	4
Arizona	14	0	0	0	0	0	0	14
Arkansas	82	1	2	0	0	0	0	81
California	160	2	2	0	3	0	0	157
Colorado	216	0	19	0	0	3	0	194
Connecticut	16	0	0	0	0	0	1	15
Delaware	17	1	2	0	0	0	0	16
District of Columbia	23	0	3	0	0	0	0	20
Florida	158	3	5	0	0	0	2	154
Georgia	74	4	3	0	0	0	0	75
Hawaii	3	0	0	0	0	0	0	3
Idaho	7	0	1	0	0	0	0	6
Illinois	333	0	4	0	0	2	2	325
Indiana	85	0	1	0	0	0	0	84
Iowa	100	0	1	0	0	4	0	95
Kansas	149	0	1	0	0	1	0	147
Kentucky	86	4	3	0	0	0	0	87
Louisiana	45	0	1	0	0	0	1	43
Maine	6	1	0	0	0	0	0	7
Maryland	27	1	1	0	0	0	0	27
Massachusetts	25	0	0	0	0	0	0	25
Michigan	62	0	0	0	0	2	0	60
Minnesota	150	2	1	0	0	0	2	149
Mississippi	27	0	0	0	0	0	0	27
Missouri	85	0	0	1	0	1	0	83
Montana	38	0	0	0	0	2	0	36
Nebraska	109	0	0	1	0	0	0	108
Nevada	7	0	0	0	0	0	0	7
New Hampshire	12	0	1	0	0	0	1	10
New Jersey	48	0	0	1	0	0	0	47
New Mexico	38	0	0	0	0	0	0	38
New York	90	1	5	0	1	1	1	83
North Carolina	15	1	0	1	0	0	0	15
North Dakota	30	1	0	0	0	0	0	31
Ohio	126	0	3	0	0	0	0	123
Oklahoma	158	0	1	1	0	2	2	152
Oregon	8	0	0	0	0	1	0	7
Pennsylvania	150	0	2	0	0	0	0	148
Rhode Island	5	0	0	0	0	0	0	5
South Carolina	29	0	2	0	0	0	0	27
South Dakota	20	0	0	0	0	0	0	20
Tennessee	45	1	1	0	0	0	0	45
Texas	586	0	1	0	0	0	3	582
Utah	7	1	0	0	0	0	0	8
Vermont	12	0	0	0	0	0	0	12
Virginia	43	0	0	0	0	0	0	43
Washington	27	0	0	0	0	0	0	27
West Virginia	72	0	1	0	0	0	1	70
Wisconsin	97	0	0	0	0	0	0	97
Wyoming	29	0	0	0	0	0	0	29
Puerto Rico	1	1	0	0	0	0	1	1
United States	3,809	25	68	5	4	19	17	3,721

NOTES: The column "organized and opened for business" includes all state banks converted to national banks, all newly formed national banks and savings and loan associations converted to national banks The column entitled "merged" includes all mergers, consolidations and purchases and assumptions in which an operating nationally chartered bank was acquired by another national bank Also included in this column are immediate FDIC-assisted "merger" transactions The column entitled "voluntary liquidations" includes only straight liquidations of national banks. No liquidations pursuant to a purchase and assumption transaction are included in this total Liquidations resulting from purchases and assumptions are included in the "merged" columns The column entitled "payouts" includes all failed national banks where the FDIC is named receiver and no other depository institution is named as receiver The column entitled "merged with state banks" includes all mergers, consolidations, and purchases and assumptions where the resulting institution is a state-chartered bank. Also included in this column are immediate FDIC-assisted "merger" transactions where the resulting institution is a state chartered bank.

Applications for national bank charters, January 1 to June 30, 1992

	Received	Approved	Denied	Charters issued	State-chartered banks converted to national banks	Savings and loan associations converted to national banks
Alabama	0	0	0	0	0	0
Alaska	0	0	0	0	0	0
Arizona	0	0	0	0	0	0
Arkansas	1	0	0	1	0	0
California	1	3	0	1	1	0
Colorado	0	0	0	0	0	0
Connecticut	2	0	0	0	0	0
Delaware	0	2	0	1	0	0
District of Columbia	0	0	0	0	0	0
Florida	1	0	0	2	1	0
Georgia	4	4	0	2	1	1
Hawaii	1	0	0	0	0	0
Idaho	0	0	0	0	0	0
Illinois	0	0	0	0	0	0
Indiana	0	0	0	0	0	0
Iowa	0	0	0	0	0	0
Kansas	0	0	0	0	0	0
Kentucky	0	0	0	1	3	0
Louisiana	0	0	0	0	0	0
Maine	0	1	0	1	0	0
Maryland	0	0	0	0	1	0
Massachusetts	0	0	0	0	0	0
Michigan	0	0	0	0	0	0
Minnesota	0	0	0	1	1	0
Mississippi	0	0	0	0	0	0
Missouri	0	0	0	0	0	0
Montana	0	1	0	0	0	0
Nebraska	0	0	0	0	0	0
Nevada	0	0	0	0	0	0
New Hampshire	0	0	0	0	0	0
New Jersey	0	0	0	0	0	0
New Mexico	0	0	0	0	0	0
New York	1	0	0	1	0	0
North Carolina	1	0	0	1	0	0
North Dakota	0	0	0	0	1	0
Ohio	0	0	0	0	0	0
Oklahoma	0	0	0	0	0	0
Oregon	0	0	0	0	0	0
Pennsylvania	0	0	0	0	0	0
Rhode Island	0	0	0	0	0	0
South Carolina	0	0	0	0	0	0
South Dakota	1	0	0	0	0	0
Tennessee	0	2	0	0	0	1
Texas	0	0	0	0	0	0
Utah	0	0	0	0	1	0
Vermont	0	0	0	0	0	0
Virginia	0	0	0	0	0	0
Washington	0	1	0	0	0	0
West Virginia	0	0	0	0	0	0
Wisconsin	1	0	0	0	0	0
Wyoming	0	0	0	0	0	0
Puerto Rico	0	0	0	0	0	1
United States	14	14	0	12	10	3

These figures may also include trust company, credit card banks, and other limited charter national banks

Applications for new national bank charters, approved and rejected by states, January 1 to June 30, 1992

Title and location of bank	*Approved*	*Rejected*
CALIFORNIA		
First Trust of California, San Francisco	May 14	
JCB, National Association, Los Angeles	April 7	
Mt Diablo National Bank, Danville	March 27	
DELAWARE		
Beneficial National Bank USA, Wilmington	January 31	
JCPenny Card Bank, National Association, Harrington	February 28	
GEORGIA		
First American Trust Company, Atlanta	April 24	
First South Bank of Ben Hill, Fitzgerald	May 26	
First South Bank of Coweta County, Newnan	May 26	
First South Bank of Jones County, Gray	May 26	
MAINE		
Acadia Trust, National Association, Portland	February 25	
MONTANA		
First Interstate Bank of South Missoula, Missoula	March 19	
TENNESSEE		
EFS National Bank, Memphis	January 13	
Tandy National Bank, Gray	May 21	
WASHINGTON		
Kittitas Valley Bank, National Association, Ellensburg	March 20	

New national bank charters issued, January 1 to June 30, 1992

Title and location of bank	Charter number	Date opened
ARKANSAS		
First National Bank of Arkansas, Batesville	22543	March 27
CALIFORNIA		
Valley Oaks National Bank, Solvang	22324	February 28
DELAWARE		
Beneficial National Bank USA, Wilmington	22474	February 21
FLORIDA		
Barnett Bank of Broward County, National Association, Fort Lauderdale	22424	April 1
First National Bank of Polk County, Winter Haven	22311	February 21
GEORGIA		
First American Trust Company, Atlanta	22542	May 1
Milton National Bank, Roswell	22124	January 18
KENTUCKY		
First National Bank of Northern Kentucky, Ft. Mitchell	22439	February 24
MAINE		
Acadia Trust, National Association, Portland	22475	May 1
MINNESOTA		
Norwest Bank Waseca, National Association, Waseca	22438	April 3
NEW YORK		
First Fidelity Bank, National Association, New York City	22558	June 12
NORTH CAROLINA		
Wilkes National Bank, Wilkesboro	22328	January 17

State-chartered banks converted to national banks, January 1 to June 30, 1992

Title and location of bank	*Effective date*	*Total assets*
CALIFORNIA		
California Valley Bank, National Association (22479), conversion of California Valley Bank, Fresno	March 16	$130,000,000
FLORIDA		
First Performance Bank, National Association (22540), conversion of First Performance Bank, Jacksonville	June 24	230,000,000
GEORGIA		
Southtrust Bank of Atlanta, National Association (22520), conversion of Southtrust Bank of Atlanta, Atlanta	May 1	86,140,000
KENTUCKY		
First Southern National Bank of Fayette County (22249), conversion of Peoples Bank of Paint Lick, Kentucky, Paint Lick	January 1	11,236,000
Liberty National Bank of Madisonville (22521), conversion of The Kentucky Bank & Trust Company, Madisonville	April 1	161,980,000
Liberty National Bank of Owensboro (22522), conversion of Citizens State Bank, Owensboro	April 1	249,201,000
MARYLAND		
NationsBank of Maryland, National Association (22546), conversion of NationsBank of Maryland, Bethesda	April 24	4,132,000,000
MINNESOTA		
First Bank Anoka, National Association (22514), conversion of First Bank Anoka, Anoka	June 22	75,435,000
NORTH DAKOTA		
First National Bank in Drake (22500), conversion of First Bank in Drake, Drake	June 1	14,556,000
UTAH		
Valley Bank and Trust Company, National Association (18785), conversion of Valley Bank and Trust Company, Salt Lake City	January 1	883,861,000

Savings and loan associations converted to national banks, January 1 to June 30, 1992

Title and location of bank	Effective date	Total assets
GEORGIA		
Southtrust Bank of Georgia, National Association (22411), conversion of Southtrust Bank, F.S.B., Atlanta	April 15	$202,919,000
PUERTO RICO		
Santander National Bank (22229), conversion of Santander Federal Savings Bank, Bayamon	February 1	915,642,000
TENNESSEE		
FFSB Interim National Bank (22526), conversion of Fidelity Savings and Loan Association, Nashville	March 30	995,970,000

National banks converted to state banks, January 1 to June 30, 1992

Title and location of bank	Effective date	Total assets
COLORADO		
Boulder Valley National Bank, Boulder (20446)	April 6	$ 24,000,000
Centennial National Bank, Englewood (21349)	March 31	8,000,000
Eagle National Bank, Broomfield (20533)	June 4	11,483,000
ILLINOIS		
First National Bank of Bunker Hill, Bunker Hill (10516)	January 2	25,895,000
Salem National Bank, Salem (1715)	January 14	57,920,000
IOWA		
Citizens Bank & Trust Co., N A , Belle Plains (18285)	June 30	39,200,000
The First National Bank in Colfax, Colfax (13686)	June 29	27,243,000
Iowa National Bank, Wapello (18284)	June 30	21,100,000
Northeast Iowa, National Bank, Sumner (18176)	June 30	23,300,000
KANSAS		
The American National Bank, Baxter Springs (11056)	April 20	41,137,000
MICHIGAN		
FMB Security National Bank, Manistee (14843)	April 15	96,100,000
Metrobank, National Association, Farmington Hills (15049)	June 17	56,418,000
MISSOURI		
The National Bank of Caruthersville, Caruthersville (14092)	June 30	27,006,000
MONTANA		
First National Bank of Glendive, Glendive (7101)	March 27	94,549,000
Richland National Bank & Trust, Sidney (12679)	March 27	66,947,000
NEW YORK		
Key Bank of New York, N.A., Albany (1301)	June 17	12,650,000,000
OKLAHOMA		
First National Bank of Turley, Turley (15140)	February 1	31,112,000
Victory National Bank, Nowata (14558)	June 30	25,000
OREGON		
First National Bank of Oregon, Canby (17328)	May 1	4,606,000

National banks merged into state banks, January 1 to June 30, 1992

Title and location of bank	Charter number	Effective date
CONNECTICUT		
Summit National Bank, Torrington	18668	April 3
FLORIDA		
National City Bank, Coral Springs	18472	February 21
Chemical Bank and Trust Company of Florida, N.A., Palm Beach	17323	March 13
ILLINOIS		
Bethalto National Bank, Bethalto	14557	January 2
First National Bank of Brighton, Brighton	9397	January 2
LOUISIANA		
Progressive National Bank, Rayne	17859	March 12
MINNESOTA		
First National Bank of Dunnell, Dunnell	6738	April 14
MidAmerica Bank, National Association, Roseville	15800	April 24
NEW HAMPSHIRE		
First New Hampshire Bank, National Association, Manchester	1520	June 1
NEW YORK		
First National Bank of Highland, Highland	5336	February 29
OKLAHOMA		
First National Bank of Hennessey, Hennessey	5473	May 31
Victory National Bank, Nowata	14558	June 30
TEXAS		
American National Bank Post Oak, Houston	20220	June 25
Castle Hills National Bank, San Antonio	18150	June 25
Southside National Bank, Nacogdoches	17122	March 19
WEST VIRGINIA		
First National Bank of Kenova, Kenova	9913	January 6
PUERTO RICO		
Banco Nacional, N.A., San Juan	18719	January 24

Mergers consummated involving a single operating bank, January 1 to June 30, 1992

Date consummated	Merging banks Resulting bank	Total assets
	FLORIDA	
	Colonial National Bank, Ft. Myers	
	Founders National Interim Bank, Naples	
January 1	Founders National Trust Bank, Ft Myers (20986)	$ 39 433 000
	Citizens National Bank of Naples, Naples	
	Citizens Interim National Bank, Naples	
May 1	Citizens National Bank of Naples, Naples (18630)	201 752 000
	OHIO	
	The Mahoning National Bank of Youngstown, Youngstown	
	The Mahoning Interim, National Association, Mahoning	
April 30	The Mahoning National Bank of Youngstown, Youngstown (2350)	587,300,000
	PENNSYLVANIA	
	The Farmers National Bank of Newville, Newville	
	Farmers Interim National Bank, Newville	
January 1	The Farmers National Bank of Newville, Newville (9588)	3,350,000
	The First National Bank of Slippery Rock, Slippery Rock	
	Interim National Bank of Slippery Rock, Slippery Rock	
June 30	The First National Bank of Slippery Rock, Slippery Rock (6483)	119,422,000
	TENNESSEE	
	Tennessee National Bank, Columbia	
	Tennessee Interim National Bank, Columbia	
February 11	Tennessee National Bank, Columbia (22253)	80,018,000
	WASHINGTON	
	American First National Bank, Everett	
	Amfirst Interim National Bank, Everett	
February 7	American First National Bank, Everett (18404)	37,560,000

National banks liquidated under emergency procedures, January 1 to June 30, 1992

Title and location of bank	Charter number	Effective date
CALIFORNIA		
[illegible] Bank, N.A., San Francisco	18158	May 4
Mission View National Bank, Mission View	17021	February 28
[illegible] Bank and Trust Company, N.A., Pasadena	17301	March 20
NEW YORK		
American National Bank of New York, Fleischmanns	8847	January 24

*National banks in voluntary liquidation, January 1 to June 30, 1992**

MISSOURI		
Park National Bank of Kansas City, Kansas City	9383	March 1
NEBRASKA		
First National Bank in Elm Creek, Elm Creek	16133	February 8
NEW JERSEY		
Beneficial National Bank USA, Peapack	22160	February 21
NORTH CAROLINA		
RHNB National Bank of North Carolina, Charlotte	16356	May 31
OKLAHOMA		
Union National Bank of Oklahoma, Temple	21391	April 3

**The banks included on this list are in voluntary liquidation and are permanently closing. They are not to be confused with banks which are "merging" under a purchase and assumption transaction.*

Federal branches and agencies of foreign banks in operation, January 1 tto June 30, 1992

	In operation, January 1-June 30, 1992	Opened, January 1-June 30, 1992	Closed, January 1-June 30, 1992	In operation, June 30, 1992
Federal branches				
California	4	0	0	4
District of Columbia	1	0	0	1
Illinois	1	0	0	1
New York	53	0	0	53
Washington	1	0	0	1
Limited federal branches				
California	11	0	0	11
District of Columbia	2	0	0	2
Illinois	4	0	0	4
New York	5	0	0	5
Federal agencies				
Florida	1	0	0	1

Applications for federal branches of foreign banks, by states, January 1 to June 30, 1992

	Received	Approved	Disapproved	Withdrawn
New York	1	1	0	0

Statistical Tables

Tables provided by the Banking Research and Statistics Division.

Assets, liabilities and capital accounts of national banks, June 30, 1991, and June 30, 1992
(Dollar amounts in millions)

	June 30, 1991	June 30, 1992	Change June 30, 1991-June 30, 1992 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Assets				
Cash and balances due from depository institutions:				
Noninterest-bearing balances and currency and coin	$113,992	$114,588	$596	0.52
Interest-bearing balances	57,289	54,580	-2,710	-4.73
Investment Securities	328,870	381,312	52,442	15.95
Federal funds sold and securities purchased under agreements to resell	89,701	87,850	-1,851	2.06
Loans and leases, net of unearned income	1,246,231	1,204,859	-41,371	3.32
Less allowance for loan and lease losses	33,002	33,941	939	2.84
Less allocated transfer risk reserve	221	99	-122	-55.16
Net loans and leases	1,213,008	1,170,819	-42,188	-3.48
Premises and fixed assets	29,988	31,134	1,146	3.82
Other real estate owned	17,480	18,439	959	5.49
All other assets	110,876	112,864	1,988	1.79
Total assets	1,961,205	1,971,586	10,381	0.53
Liabilities				
Deposits:				
Noninterest-bearing deposits in domestic offices	264,051	285,680	21,629	8.19
Interest-bearing deposits in domestic offices	1,078,420	1,060,602	-17,818	-1.65
Total domestic deposits	1,342,471	1,346,282	3,811	0.28
Total foreign deposits	189,229	193,379	4,151	2.19
Total deposits	1,531,699	1,539,661	7,962	0.52
Federal funds purchased and securities sold under agreements to repurchase	142,492	135,947	-6,544	-4.59
Demand notes issued to the U.S. Treasury	20,365	19,463	-902	-4.43
Other borrowed money	62,781	65,335	2,554	4.07
Subordinated notes and debentures	15,406	17,111	1,705	11.07
All other liabilities	64,715	57,398	-7,317	-11.31
Total Liabilities	1,837,458	1,834,915	-2,543	-0.14
Limited-life preferred stock	1	5	5	781.17
Equity Capital				
Perpetual preferred stock	311	313	2	0.59
Common Stock	17,145	16,058	-1,087	6.34
Surplus	51,198	61,200	10,002	19.54
Net undivided profits and capital reserves	55,601	59,542	3,941	7.09
Cumulative foreign currency translation adjustments	-510	448	62	-12.15
Total equity capital	123,746	136,665	12,920	10.44
Total liabilities, limited-life preferred stock, and equity capital	1,961,205	1,971,586	10,381	0.53

Income and expenses of foreign and domestic offices and subsidiaries of national banks, June 30, 1992
(Dollar amounts in millions)

	Consolidated foreign and domestic	*Percent distribution*
Interest income		
Interest and fee income on loans	$54,924	72.3
Income from lease financing receivables	1,462	1.9
Interest income on balances due from depository institutions	2,430	3.2
Interest and dividend income on securities	13,772	18.1
Interest income from assets held in trading accounts	1,353	1.8
Interest income from federal funds sold and securities purchased under agreements to resell	2,015	2.7
Total interest income	75,956	100.0
Interest expense		
Interest on deposits	31,029	80.3
Expense of federal funds purchased and securities sold under agreements to repurchase	2,978	7.7
Interest on demand notes issued to the U.S. Treasury and on other borrowed money	4,026	10.4
Interest on mortgage indebtedness and obligations under capitalized leases	50	0.1
Interest on notes and debentures subordinated to deposits	552	1.4
Total interest expense	38,635	100.0
Net interest income	37,321	
Provision for loan and lease losses	7,992	
Provision for allocated transfer risk	-76	
Noninterest income		
Service charges on deposit accounts	4,236	21.5
Other noninterest income	15,458	78.5
Total noninterest income	19,694	100.0
Gains and losses on securities not held in trading accounts	1,085	
Noninterest expense		
Salaries and employee benefits	15,616	41.0
Expenses of premises and fixed assets (net of rental income)	5,185	13.6
Other noninterest expense	17,257	45.3
Total noninterest expense	38,059	100.0
Income (loss) before income taxes and extraordinary items and other adjustments	12,125	
Applicable income taxes	3,783	
Income before extraordinary items and other adjustments	8,343	
Extraordinary items and other adjustments, net of taxes	179	
Net Income	8,521	
Total cash dividends declared*	2,629	
Recoveries credited to allowance for possible loan losses	1,694	
Losses charged to allowance for possible loan losses	9,005	
Net loan losses	7,311	

*Banks with assets of less than $100 million report this item only in their December Report of Income.

Loans of national banks, June 30, 1992
(Dollar amounts in millions)

	Total loans, gross	Domestic offices					Total loans at foreign offices
		Loans secured by real estate	Loans to farmers	Commercial and industrial loans	Loans to individuals	Other loans	
All national banks	$1,210,021	$479,920	$15,198	$274,947	$205,494	$98,197	$136,265
Alabama	11,219	5,029	90	3,229	2,114	758	0
Alaska	1,435	599	0	515	190	127	3
Arizona	10,728	3,744	327	1,575	4,563	519	0
Arkansas	6,194	3,238	264	1,201	1,286	205	0
California	163,959	82,578	2,037	24,781	20,842	7,540	26,180
Colorado	9,375	3,693	427	1,869	2,891	495	0
Connecticut	12,013	7,411	17	3,100	857	629	0
Delaware	14,990	517	1	123	14,240	108	0
District of Columbia	6,619	3,478	0	1,532	430	680	498
Florida	59,196	35,828	165	8,199	11,990	2,938	75
Georgia	25,204	9,951	104	6,841	5,885	2,343	80
Hawaii	224	141	0	71	10	2	0
Idaho	5,443	1,641	552	1,264	1,547	440	0
Illinois	62,724	20,938	845	23,482	7,250	5,715	4,495
Indiana	21,074	8,875	341	4,870	5,308	1,680	0
Iowa	7,146	2,944	654	1,596	1,574	378	0
Kansas	6,894	2,787	876	1,520	1,451	260	0
Kentucky	11,405	4,813	150	2,706	2,669	1,064	3
Louisiana	9,954	4,412	74	2,456	2,367	612	34
Maine	1,625	1,115	4	314	146	47	0
Maryland	19,674	9,062	18	3,208	5,894	1,228	265
Massachusetts	30,383	10,212	23	11,585	1,406	2,209	4,948
Michigan	35,172	14,122	170	11,258	5,219	2,909	1,493
Minnesota	24,851	10,232	614	7,130	3,190	3,575	111
Mississippi	5,185	2,301	105	1,164	1,143	472	0
Missouri	18,173	8,268	336	4,851	3,063	1,654	0
Montana	2,021	610	193	424	754	40	0
Nebraska	7,209	1,851	1,215	1,194	2,597	352	0
Nevada	6,241	1,187	11	279	4,739	25	0
New Hampshire	745	271	0	91	378	6	0
New Jersey	41,991	24,083	17	9,857	5,352	2,521	161
New Mexico	3,946	2,358	119	571	791	106	0
New York	206,349	49,650	192	32,068	12,158	17,134	95,148
North Carolina	37,151	15,398	210	12,246	3,454	5,032	812
North Dakota	1,703	603	261	420	367	51	0
Ohio	59,869	21,582	324	14,231	18,266	5,408	57
Oklahoma	7,206	3,179	568	1,774	1,284	401	0
Oregon	12,246	4,251	299	3,557	2,695	1,444	0
Pennsylvania	67,255	25,426	99	20,862	9,454	10,039	1,376
Rhode Island	9,474	4,356	0	3,136	495	1,475	11
South Carolina	12,243	6,899	52	2,133	1,946	1,213	0
South Dakota	8,827	741	403	1,535	4,466	1,682	0
Tennessee	15,548	6,809	103	3,837	3,353	1,445	0
Texas	59,596	21,403	1,440	19,196	10,197	6,912	449
Utah	5,326	2,176	116	1,146	1,490	399	0
Vermont	1,696	1,111	17	373	176	19	0
Virginia	15,649	7,492	105	3,768	3,300	984	0
Washington	25,420	10,589	902	6,525	5,710	1,643	51
West Virginia	6,070	3,308	10	1,022	1,544	186	0
Wisconsin	13,886	5,983	241	3,921	2,660	1,067	14
Wyoming	852	277	105	205	245	20	0
Puerto Rico	644	398	1	135	103	7	0

*Zeros indicate amounts of less than $500,000

Deposits of national banks, June 30, 1992
(Dollar amounts in millions)

	Total demand deposits at domestic offices	All NOW accounts	Money market deposit accounts	Large time deposits	All other deposits at domestic offices	Total deposits at foreign offices	Total consolidated deposits
All national banks	$276,070	$145,272	$267,393	$146,336	$511,210	$193,379	$1,539,661
Alabama	2,344	1,671	2,837	1,744	5,704	172	14,472
Alaska	753	212	385	307	857	0	2,515
Arizona	3,541	1,871	4,357	1,086	5,279	0	16,134
Arkansas	1,786	1,806	1,310	1,280	5,126	0	11,307
California	37,305	16,060	44,235	14,297	44,223	21,133	177,253
Colorado	4,654	2,860	3,892	1,043	5,390	21	17,859
Connecticut	4,219	1,943	2,676	1,130	7,810	177	17,955
Delaware	302	101	2,213	3,962	1,554	3	8,133
District of Columbia	2,278	1,521	2,746	1,701	2,207	1,100	11,553
Florida	14,395	8,087	16,094	11,210	33,975	218	83,979
Georgia	7,034	3,475	5,146	3,381	11,265	351	30,651
Hawaii	57	42	36	39	118	0	293
Idaho	1,043	737	1,258	419	2,526	0	5,984
Illinois	15,588	6,745	11,839	13,680	26,953	14,581	89,386
Indiana	5,146	3,466	4,485	2,025	10,957	57	26,136
Iowa	2,092	1,508	1,707	686	5,421	0	11,414
Kansas	1,783	1,754	2,023	999	5,604	0	12,162
Kentucky	2,715	2,226	1,711	1,184	6,586	251	14,673
Louisiana	3,879	2,348	3,105	2,266	7,373	11	18,982
Maine	197	220	217	121	1,093	0	1,847
Maryland	4,283	2,068	3,611	3,040	9,649	360	23,012
Massachusetts	6,211	2,753	7,515	3,742	9,026	5,695	34,941
Michigan	7,917	2,920	8,410	3,459	17,354	3,368	43,428
Minnesota	6,277	3,582	5,856	2,348	10,633	242	28,938
Mississippi	1,385	1,249	1,466	962	3,616	0	8,679
Missouri	5,469	3,449	5,331	1,633	10,840	75	26,799
Montana	553	499	640	165	1,286	0	3,143
Nebraska	1,730	1,471	1,268	773	5,191	0	10,432
Nevada	862	502	1,035	364	1,405	0	4,169
New Hampshire	66	92	98	261	275	0	792
New Jersey	12,172	6,750	7,558	3,119	29,950	50	59,598
New Mexico	1,058	1,050	951	684	2,902	0	6,646
New York	31,028	8,629	29,335	14,026	31,863	133,323	248,204
North Carolina	6,474	2,590	5,747	5,567	12,026	4,859	37,262
North Dakota	364	525	437	184	1,470	0	2,979
Ohio	11,464	7,178	10,851	5,027	31,917	1,258	67,695
Oklahoma	2,791	2,013	1,906	1,550	5,752	38	14,050
Oregon	2,722	2,019	2,932	469	4,720	0	12,863
Pennsylvania	15,674	7,244	16,088	7,983	36,767	3,464	87,219
Rhode Island	1,290	479	1,469	3,562	2,482	374	9,656
South Carolina	2,581	2,211	2,590	1,281	5,318	0	13,981
South Dakota	583	526	1,001	1,533	3,682	0	7,326
Tennessee	4,291	2,537	4,544	1,893	9,879	38	23,182
Texas	20,883	13,725	19,614	13,844	36,178	1,151	105,396
Utah	1,365	973	1,302	289	2,786	108	6,823
Vermont	224	253	350	160	1,040	0	2,028
Virginia	3,795	2,865	2,975	1,860	9,564	16	21,075
Washington	6,410	3,032	6,472	1,628	8,871	751	27,164
West Virginia	1,170	1,123	815	544	5,555	0	9,208
Wisconsin	3,505	1,826	2,615	1,005	8,229	137	17,317
Wyoming	296	352	323	209	732	0	1,912
Puerto Rico	68	135	10	612	233	0	1,058

*Zero means amount of less than $500,000

Interest income of national banks, June 30, 1992
(Dollar amounts in millions)

	Interest and fees on loans	Income from lease financing	Interest due from other depository institutions	Interest and dividends on securities	Interest from trading account assets	Interest from federal funds transactions	Total interest income
All national banks	$54,924	$1,462	$2,430	$13,772	$1,353	$2,015	$75,956
Alabama	481	3	2	196	1	10	693
Alaska	65	1	1	60	0	1	128
Arizona	493	11	6	166	5	21	703
Arkansas	277	1	3	168	1	13	462
California	6,366	130	125	695	159	169	7,644
Colorado	475	6	10	222	1	39	753
Connecticut	523	0	1	231	0	12	767
Delaware	1,025	3	6	46	0	6	1,086
District of Columbia	282	4	25	113	0	31	455
Florida	2,660	11	72	712	1	148	3,604
Georgia	1,164	16	6	283	5	70	1,544
Hawaii	10	0	0	2	0	1	13
Idaho	233	7	2	51	5	4	302
Illinois	2,523	17	283	771	114	148	3,856
Indiana	940	24	6	237	0	27	1,233
Iowa	322	1	1	230	0	10	564
Kansas	336	3	2	202	0	10	554
Kentucky	489	9	3	150	0	25	677
Louisiana	473	1	13	291	0	23	801
Maine	74	0	0	13	0	1	88
Maryland	977	7	8	241	4	28	1,266
Massachusetts	1,970	88	380	360	5	23	2,828
Michigan	1,462	16	42	461	9	29	2,019
Minnesota	991	28	6	316	12	42	1,395
Mississippi	231	0	3	147	0	9	390
Missouri	745	10	4	308	5	52	1,123
Montana	107	0	2	32	0	7	148
Nebraska	386	3	2	130	0	10	531
Nevada	583	0	0	40	0	4	626
New Hampshire	51	0	0	6	0	0	57
New Jersey	1,799	16	35	530	4	57	2,441
New Mexico	195	1	1	79	0	12	289
New York	10,796	641	1,122	1,270	874	211	14,914
North Carolina	1,409	44	52	352	84	127	2,068
North Dakota	82	1	2	39	0	5	130
Ohio	2,887	84	22	645	2	77	3,717
Oklahoma	334	0	7	224	1	15	580
Oregon	540	42	0	92	4	11	689
Pennsylvania	2,647	109	87	1,164	17	54	4,079
Rhode Island	299	65	0	63	0	24	452
South Carolina	560	3	1	169	2	21	757
South Dakota	479	5	1	35	0	8	528
Tennessee	669	8	11	298	11	19	1,016
Texas	2,418	7	54	1,267	8	322	4,075
Utah	236	8	6	63	12	4	330
Vermont	82	0	0	15	0	1	98
Virginia	776	6	6	156	1	34	979
Washington	998	11	1	67	3	11	1,091
West Virginia	290	0	2	146	0	9	448
Wisconsin	641	10	3	167	1	14	836
Wyoming	40	0	0	38	0	1	80
Puerto Rico	33	0	1	12	0	2	49

*Zeros indicate amounts of less than $500,000

Noninterest income of national banks, June 30, 1992
(Dollar amounts in millions)

	Service charges on deposit accounts	Gains (Losses) on foreign exchange transactions	Gains (Losses) on fees from assets in trading accounts	Other noninterest income + extraordinary items	Gains (Losses) on assets not in trading accounts	Total noninterest income and gains (losses) on assets not in trading accounts
All national banks	$4,236	$764	$539	$14,333	$1,085	$20,958
Alabama	45	2	5	88	3	144
Alaska	9	0	0	18	4	31
Arizona	70	1	2	144	11	228
Arkansas	30	0	4	50	3	88
California	601	105	46	1,500	17	2,270
Colorado	75	1	3	193	3	275
Connecticut	60	3	1	145	22	232
Delaware	3	0	0	705	0	708
District of Columbia	34	2	1	103	40	180
Florida	307	4	1	465	48	825
Georgia	137	1	5	291	66	501
Hawaii	1	0	0	1	0	1
Idaho	22	0	−1	27	1	50
Illinois	195	34	71	485	60	844
Indiana	66	1	2	166	6	240
Iowa	27	0	0	94	3	124
Kansas	32	0	0	53	4	90
Kentucky	36	0	0	56	6	99
Louisiana	68	0	4	95	25	193
Maine	4	0	0	10	1	15
Maryland	95	2	−2	147	66	309
Massachusetts	82	10	13	404	94	603
Michigan	114	7	9	278	10	418
Minnesota	83	5	3	315	34	440
Mississippi	26	0	1	34	1	62
Missouri	80	3	18	166	13	280
Montana	8	0	0	18	1	26
Nebraska	25	0	0	145	4	174
Nevada	15	0	0	246	0	261
New Hampshire	1	0	0	1	1	3
New Jersey	154	2	7	270	39	472
New Mexico	19	0	0	26	3	49
New York	256	531	252	2,983	128	4,151
North Carolina	133	10	−1	313	4	460
North Dakota	6	0	0	12	0	18
Ohio	174	5	3	695	49	926
Oklahoma	46	1	5	76	6	134
Oregon	67	1	6	149	0	223
Pennsylvania	221	14	4	652	137	1,027
Rhode Island	12	0	0	207	14	233
South Carolina	51	0	1	75	10	137
South Dakota	7	0	0	860	1	868
Tennessee	77	0	54	115	1	248
Texas	399	9	12	766	97	1,283
Utah	28	0	−2	51	0	78
Vermont	4	0	0	10	1	14
Virginia	54	0	2	268	38	363
Washington	108	7	5	196	0	316
West Virginia	15	0	0	29	2	46
Wisconsin	47	1	1	130	4	183
Wyoming	4	0	0	5	0	10
Puerto Rico	2	0	0	1	1	4

*Zeros indicate amounts of less than $500,000

Interest expense of national banks, June 30, 1992
(Dollar amounts in millions)

	Interest on deposits	Expense of federal funds transactions	Interest on treasury demand notes and other borrowed money	Interest on mortgage and capitalized leases	Interest on subordinated notes and debentures	Total interest expense
All national banks	$31,029	$2,978	$4,026	$50	$552	$38,635
Alabama	285	34	4	0	0	323
Alaska	35	8	0	0	0	43
Arizona	260	7	23	0	1	290
Arkansas	203	4	7	0	0	214
California	2,674	185	292	8	91	3,251
Colorado	285	15	1	1	1	303
Connecticut	304	30	8	1	2	344
Delaware	245	71	111	1	8	435
District of Columbia	231	12	4	0	1	247
Florida	1,446	116	36	2	8	1,608
Georgia	596	108	8	1	3	715
Hawaii	5	0	0	0	0	5
Idaho	113	20	3	0	0	137
Illinois	1,778	185	109	1	55	2,128
Indiana	493	51	10	1	0	555
Iowa	238	26	11	0	0	276
Kansas	251	11	1	0	0	263
Kentucky	289	37	4	0	0	330
Louisiana	318	23	2	0	0	344
Maine	42	2	2	0	0	46
Maryland	468	51	99	0	6	625
Massachusetts	1,402	112	453	1	9	1,976
Michigan	863	76	49	1	3	991
Minnesota	494	97	22	1	9	624
Mississippi	171	16	1	0	0	188
Missouri	477	59	13	3	0	553
Montana	55	3	0	0	0	59
Nebraska	221	10	1	1	0	234
Nevada	74	18	32	0	0	124
New Hampshire	18	0	2	0	0	20
New Jersey	1,061	43	10	1	13	1,128
New Mexico	131	6	0	0	0	137
New York	6,939	374	2,336	9	241	9,899
North Carolina	696	358	46	3	12	1,115
North Dakota	64	1	0	0	0	65
Ohio	1,280	174	54	2	15	1,524
Oklahoma	257	8	4	0	0	269
Oregon	202	22	37	0	1	262
Pennsylvania	1,675	170	111	2	34	1,992
Rhode Island	201	22	14	0	3	240
South Carolina	256	83	3	0	2	344
South Dakota	207	27	31	0	1	267
Tennessee	416	43	6	0	5	470
Texas	1,749	129	42	3	16	1,940
Utah	123	20	4	0	0	147
Vermont	48	1	0	0	0	50
Virginia	438	40	5	0	2	484
Washington	377	23	15	2	6	423
West Virginia	191	14	1	0	0	207
Wisconsin	325	35	2	0	1	364
Wyoming	35	1	0	0	0	35
Puerto Rico	20	0	0	0	1	21

*Zeros indicate amounts of less than $500,000

Noninterest and Other Expense of National Banks, June 30, 1992
(Dollar amounts in millions)

	Provision for loan and lease losses	*Provision for allocated transfer risk*	*Salaries and employee benefits*	*Expenses of premises and fixed assets*	*Applicable income taxes*	*Other noninterest expense*	*Total noninterest and other expense*
All national banks	$7 992	–$76	$15,616	$5,185	$3,783	$17,257	$49,758
Alabama	32	0	149	46	45	128	399
Alaska	2	0	34	11	16	17	80
Arizona	82	0	202	55	40	196	576
Arkansas	13	0	96	26	30	91	256
California	1 315	77	1 778	664	490	1,903	6,073
Colorado	33	0	207	69	36	285	629
Connecticut	95	0	190	65	26	254	630
Delaware	265	0	177	45	137	503	1,128
District of Columbia	77	0	100	43	0	190	410
Florida	255	0	692	300	204	893	2,344
Georgia	156	0	318	103	113	362	1,052
Hawaii	0	0	4	2	0	3	9
Idaho	16	0	46	11	25	70	167
Illinois	280	1	776	241	139	688	2,125
Indiana	102	0	240	74	91	232	739
Iowa	27	0	105	34	40	116	322
Kansas	23	0	103	27	35	110	298
Kentucky	41	0	127	39	31	114	351
Louisiana	83	0	180	53	43	192	551
Maine	8	0	18	6	1	19	53
Maryland	204	0	279	83	49	243	858
Massachusetts	110	0	423	145	111	446	1,235
Michigan	114	0	457	129	87	407	1,193
Minnesota	102	0	280	94	94	358	928
Mississippi	24	0	79	22	20	65	209
Missouri	60	0	239	72	76	236	683
Montana	10	0	26	8	13	36	93
Nebraska	42	0	102	34	41	161	379
Nevada	143	0	55	21	91	274	584
New Hampshire	18	0	5	1	0	16	40
New Jersey	266	0	494	180	81	561	1,581
New Mexico	15	0	65	20	15	53	168
New York	2,176	0	3,015	1,033	152	2,385	8,761
North Carolina	63	0	366	106	118	450	1,104
North Dakota	6	0	24	7	7	22	66
Ohio	395	0	621	173	286	983	2,458
Oklahoma	16	0	145	37	32	126	355
Oregon	65	0	195	43	72	133	508
Pennsylvania	285	0	819	293	271	809	2,476
Rhode Island	69	0	77	15	32	209	403
South Carolina	57	0	149	50	50	140	446
South Dakota	175	0	96	25	101	560	956
Tennessee	76	0	242	63	57	219	657
Texas	235	0	1,002	353	130	1,035	2,756
Utah	25	0	62	16	24	90	217
Vermont	9	0	21	7	3	20	59
Virginia	181	0	192	68	44	303	789
Washington	84	0	271	86	93	270	804
West Virginia	16	0	79	22	29	69	215
Wisconsin	41	0	175	57	57	186	515
Wyoming	2	0	15	4	5	18	44
Puerto Rico	4	0	7	3	2	8	23

*Zeros indicate amounts of less than $500,000

*Book value of securities at domestic offices of national banks, June 30, 1992**
(Dollar amounts in millions)

	U S treasury securities	U S government issued or guaranteed certificates of participation	Other U S government agency and corporation obligations	Securities issued by states and political subdivisions in the U S	Other domestic debt securities	Foreign debt securities	Equity securities
All national banks	$114,376	$95,839	$91,493	$33,042	$26,751	$11,316	$6,226
Alabama	520	1,437	1,868	924	324	14	46
Alaska	743	49	363	159	286	0	6
Arizona	1,268	312	2,463	91	507	19	32
Arkansas	1,857	555	1,736	562	205	1	37
California	3,516	8,830	2,947	889	606	658	466
Colorado	1,597	2,266	1,695	419	183	0	62
Connecticut	2,317	3,236	194	20	403	7	34
Delaware	728	80	195	8	260	0	35
District of Columbia	1,773	427	1,120	138	273	64	25
Florida	8,209	3,190	5,383	2,024	2,235	315	280
Georgia	2,197	2,066	2,118	798	583	6	299
Hawaii	7	4	34	2	0	0	1
Idaho	293	128	553	235	194	0	20
Illinois	6,026	3,018	5,517	3,184	2,502	338	517
Indiana	1,358	1,581	1,942	1,014	616	4	62
Iowa	1,095	2,082	1,568	637	172	0	47
Kansas	1,249	1,465	2,114	677	79	0	59
Kentucky	1,571	448	1,189	869	275	0	45
Louisiana	3,433	2,551	1,648	260	452	3	33
Maine	155	68	56	17	26	0	6
Maryland	2,078	1,295	3,103	601	309	7	51
Massachusetts	1,595	3,275	1,249	53	521	469	156
Michigan	1,614	5,956	1,483	1,798	848	66	125
Minnesota	1,672	3,755	894	754	646	6	137
Mississippi	1,209	601	1,456	510	274	1	24
Missouri	4,928	1,410	1,562	837	323	1	50
Montana	241	359	132	46	20	0	18
Nebraska	1,343	566	810	452	123	2	25
Nevada	467	292	128	49	214	0	8
New Hampshire	74	17	24	25	28	0	4
New Jersey	5,287	2,359	4,947	1,144	890	52	188
New Mexico	932	552	484	224	21	0	51
New York	7,396	9,240	2,386	1,620	1,485	8,876	1,418
North Carolina	7,336	1,635	439	1,342	252	37	42
North Dakota	225	505	178	74	15	0	11
Ohio	4,275	2,382	5,192	2,736	2,155	24	147
Oklahoma	2,570	1,260	1,559	480	229	1	100
Oregon	818	718	566	303	108	2	16
Pennsylvania	7,087	11,191	10,023	1,915	2,464	241	305
Rhode Island	254	1,127	54	16	51	2	49
South Carolina	2,304	874	959	302	165	13	73
South Dakota	109	528	68	95	31	0	38
Tennessee	2,004	1,183	4,597	804	453	2	58
Texas	12,809	7,756	9,542	1,049	3,686	71	345
Utah	365	201	991	157	173	0	146
Vermont	124	96	87	41	19	0	15
Virginia	2,178	625	828	411	301	1	60
Washington	796	420	325	377	123	2	86
West Virginia	1,004	410	1,739	580	72	0	79
Wisconsin	923	1,048	736	1,212	472	8	270
Wyoming	399	251	248	61	51	0	12
Puerto Rico	50	158	0	45	45	0	5

Zeros indicate amounts of less than $500,000
*Excludes assets held in trading accounts

Selected off balance sheet items at national banks, June 30, 1992

(Dollar amounts in millions)

	Unused commitments	Letters of credit	Securities lent	Mortgages transferred to FNMA and FHLMC with recourse	Notional value of swap contracts	When-issued securities and futures and forward contracts	Written and purchased option contracts
All national banks	$761,959	$132,514	$11,583	$8,264	$1,138,672	$2,656,106	$662,624
Alabama	3,728	791	82	11	942	530	906
Alaska	532	23	56	0	45	26	0
Arizona	17,558	225	0	27	634	1,462	38
Arkansas	1,116	78	0	144	0	133	44
California	96,633	19,703	2,484	169	245,169	525,394	81,199
Colorado	6,506	322	0	0	158	172	43
Connecticut	4,528	763	407	2	2,204	2,175	240
Delaware	98,778	7	0	0	5,787	0	0
District of Columbia	2,038	395	0	0	1,750	1,630	343
Florida	17,205	2,776	57	413	3,214	109	2,709
Georgia	17,284	2,091	4	60	7,485	947	1,117
Hawaii	72	2	0	0	0	0	0
Idaho	2,153	146	0	0	362	2,205	97
Illinois	54,364	10,606	97	13	143,537	306,601	171,373
Indiana	9,476	999	879	15	3,678	461	25
Iowa	7,239	223	46	0	937	13	0
Kansas	2,246	127	0	22	1	9	0
Kentucky	2,479	468	64	9	588	33	6
Louisiana	3,060	329	0	82	115	162	290
Maine	347	21	0	0	119	0	89
Maryland	12,094	1,062	73	81	5,228	1,894	2,521
Massachusetts	18,308	3,100	5	85	12,189	34,182	18,008
Michigan	14,978	2,620	0	275	4,689	4,040	857
Minnesota	9,160	3,115	110	66	3,345	5,614	4,701
Mississippi	1,380	113	101	0	5	603	155
Missouri	7,075	1,361	225	0	884	1,262	46
Montana	1,068	69	0	0	195	0	0
Nebraska	6,212	152	25	0	827	7	0
Nevada	846	51	0	1	2,670	2,669	200
New Hampshire	519	1	0	0	0	0	70
New Jersey	10,784	1,254	0	0	4,212	1,778	14
New Mexico	1,033	41	0	27	225	11	0
New York	94,725	51,950	1,179	5,692	584,765	1,682,275	345,095
North Carolina	21,168	4,300	0	65	7,102	28,669	16,629
North Dakota	373	20	71	0	117	0	1
Ohio	46,639	4,149	0	294	30,834	4,421	3,181
Oklahoma	1,952	196	0	33	25	71	2
Oregon	8,224	526	0	8	2,082	623	998
Pennsylvania	29,835	8,855	927	161	26,297	13,158	4,503
Rhode Island	5,716	429	0	0	3,418	2,042	425
South Carolina	3,678	263	253	8	263	181	35
South Dakota	55,256	47	0	0	2,826	2,560	200
Tennessee	5,718	790	37	49	429	2,826	219
Texas	25,849	3,995	4,219	110	14,838	5,532	4,333
Utah	2,104	205	0	0	175	2,526	722
Vermont	340	33	0	0	32	11	10
Virginia	6,228	1,208	62	286	1,025	493	397
Washington	15,501	1,645	50	0	8,385	16,393	396
West Virginia	979	96	66	0	50	0	0
Wisconsin	6,648	756	0	57	4,815	203	386
Wyoming	126	14	4	0	0	0	0
Puerto Rico	101	4	0	0	0	0	0

Zero indicates amounts of less than $500,000.

Swap, futures and forward and option contracts include interest rate, foreign exchange, and commodities and equities contracts.

Outstanding balances, credit cards, and related plans of national banks, June 30, 1992
(Dollar amounts in thousands)

	Total number of national banks	*Credit cards and other related credit plans*	
		Number of national banks	*Outstanding volume*
All national banks	3,691	2,247	$75 101 621
Alabama	51	28	366 620
Alaska	4	3	50 686
Arizona	14	13	2 071 322
Arkansas	79	27	173 158
California	152	140	12,336 721
Colorado	191	171	1,035 335
Connecticut	13	9	128 646
Delaware	14	14	14,027,802
District of Columbia	19	17	160,184
Florida	151	84	2 133,074
Georgia	74	51	2 437,212
Hawaii	3	1	3,316
Idaho	8	8	240,428
Illinois	322	188	1,152,684
Indiana	81	74	1,036,545
Iowa	98	57	537 418
Kansas	149	50	318,128
Kentucky	85	41	182,330
Louisiana	43	22	468,048
Maine	7	6	39,552
Maryland	28	23	4,176,994
Massachusetts	26	18	245,859
Michigan	59	45	623,232
Minnesota	151	111	702,759
Mississippi	27	13	107,874
Missouri	84	55	454,441
Montana	39	26	299,128
Nebraska	108	48	1,514,979
Nevada	6	4	4,477,012
New Hampshire	6	4	346,970
New Jersey	49	42	740,275
New Mexico	37	20	188,860
New York	83	58	4,975,684
North Carolina	15	15	427,275
North Dakota	30	23	76,733
Ohio	125	101	5 363 718
Oklahoma	155	61	73,644
Oregon	7	7	1,424,769
Pennsylvania	148	94	832,656
Rhode Island	3	2	136 405
South Carolina	27	27	324,146
South Dakota	21	14	3 555,968
Tennessee	46	26	670,061
Texas	570	200	818 320
Utah	7	6	235 296
Vermont	12	6	48 585
Virginia	43	24	450,706
Washington	26	22	1,917 723
West Virginia	70	30	107 762
Wisconsin	95	90	854 253
Wyoming	29	27	11 543
Puerto Rico	1	1	18 782

Consolidated foreign and domestic loans and leases past due at national banks, June 30, 1992
(Dollar amounts in millions)

	Number of banks	Type of loan						
		All real estate	Commercial and industrial[1]	Personal[2]	Leases	Other loans[3]	Total loans	To non-U.S. addresses
All national banks	3,691	$12,947.1	$4,945.4	$7,400.2	$304.8	$696.2	$26,293.8	$810.05
Alabama	51	59.3	28.1	45.3	0.5	3.4	136.5	0.00
Alaska	4	25.3	8.1	3.8	0.1	6.7	43.9	0.00
Arizona	14	112.4	39.4	110.9	0.5	4.8	268.0	1.02
Arkansas	79	54.6	30.8	24.0	0.1	1.6	111.0	0.00
California	152	3,107.9	748.4	856.2	17.4	102.3	4,832.3	17.14
Colorado	191	56.4	58.3	43.8	0.6	1.1	160.2	0.00
Connecticut	13	257.3	74.6	72.3	0.0	21.7	425.8	0.00
Delaware	14	10.6	4.8	475.8	1.1	0.0	492.3	0.00
District of Columbia	19	127.3	41.4	13.7	0.3	11.6	194.3	2.24
Florida	151	703.3	143.0	195.3	0.4	5.4	1,047.5	2.01
Georgia	74	145.1	77.3	136.5	1.4	56.1	416.4	0.00
Hawaii	3	1.7	0.3	0.1	0.0	0.0	2.1	0.00
Idaho	8	15.5	13.7	20.2	0.7	9.1	59.2	0.00
Illinois	322	433.0	336.3	150.4	0.8	22.7	943.3	0.00
Indiana	81	185.8	89.4	161.8	7.1	6.6	450.8	0.00
Iowa	98	32.2	46.9	43.5	0.1	5.2	127.9	0.00
Kansas	149	36.2	58.1	23.0	1.5	1.8	120.6	0.00
Kentucky	85	83.0	47.9	42.9	1.9	0.8	176.6	0.00
Louisiana	43	79.1	46.8	71.3	0.4	2.6	200.2	0.00
Maine	7	28.6	8.0	5.2	0.0	0.0	41.8	0.00
Maryland	28	239.3	49.8	276.6	2.2	15.5	583.4	0.64
Massachusetts	26	396.5	181.7	96.0	11.9	5.0	691.2	5.17
Michigan	59	268.9	113.4	106.4	4.7	16.2	509.6	0.00
Minnesota	151	151.1	190.8	70.4	9.4	35.8	457.4	3.21
Mississippi	27	32.1	18.9	21.2	0.0	4.6	76.9	0.00
Missouri	84	122.4	65.3	47.8	0.8	11.0	247.3	0.00
Montana	39	8.5	12.9	17.4	0.0	2.0	40.8	0.00
Nebraska	108	20.4	37.1	68.9	0.3	11.4	138.1	0.00
Nevada	6	26.7	3.7	242.0	0.0	0.0	272.4	0.00
New Hampshire	6	5.2	1.9	10.1	0.0	0.0	17.2	0.00
New Jersey	49	1,095.9	341.1	198.7	11.5	76.5	1,723.7	0.00
New Mexico	37	37.7	17.8	15.4	0.6	1.4	72.9	0.00
New York	83	2,044.7	540.6	1,283.7	75.3	122.0	4,066.3	768.52
North Carolina	15	181.9	135.7	50.7	2.2	3.4	373.9	0.00
North Dakota	30	9.4	12.1	7.2	0.0	1.3	30.1	0.00
Ohio	125	449.7	235.1	531.4	9.1	14.0	1,239.3	0.00
Oklahoma	155	41.3	35.5	17.3	0.1	1.9	96.1	0.00
Oregon	7	103.3	23.0	42.8	27.1	0.6	196.7	0.00
Pennsylvania	148	580.4	231.7	298.8	43.1	28.1	1,182.2	3.70
Rhode Island	3	155.1	48.3	19.7	55.7	4.2	282.9	0.00
South Carolina	27	109.5	37.9	57.0	1.5	1.6	207.5	0.00
South Dakota	21	7.8	37.9	811.7	2.1	6.7	866.2	0.00
Tennessee	46	139.1	51.2	88.9	2.4	3.0	284.6	0.00
Texas	570	433.6	281.1	205.7	2.5	27.9	950.8	6.34
Utah	7	38.3	18.5	19.0	0.5	4.6	80.9	0.00
Vermont	12	32.3	17.9	6.8	0.0	0.4	57.3	0.00
Virginia	43	143.7	66.9	84.5	0.9	1.9	297.9	0.00
Washington	26	325.4	94.5	95.2	1.8	18.2	535.1	0.06
West Virginia	70	54.1	20.5	45.2	0.0	0.0	119.8	0.00
Wisconsin	95	108.9	108.2	58.1	3.9	13.2	292.3	0.00
Wyoming	29	2.3	12.1	4.3	0.0	0.2	19.0	0.00
Puerto Rico	1	27.1	0.6	5.2	0.2	0.0	33.1	0.00

[1] For banks with assets of less than $300 million, this category captures commercial (time and demand) and all other loans.
[2] For banks with assets of less than $300 million, this category captures installment loans and credit cards and related plans.
[3] Does not include banks with assets of less than $300 million.
[4] Zeros indicate amounts of less than $500,000.

Percent of loans past due, by asset size of national banks[1]

	Less than $300M	$300M to $1B	$1B to $10B	Greater than $10B	All national banks
Real estate					
September 1991	2.27	2.34	2.97	3.03	2.83
December 1991	2.40	2.23	2.95	3.46	3.04
March 1992	2.39	2.29	3.09	3.28	3.00
June 1992	1.92	1.85	2.74	2.86	2.59
Commercial and industrial[2]					
September 1991	4.54	2.84	2.18	1.16	1.77
December 1991	4.22	2.55	2.00	1.13	1.66
March 1992	4.85	2.81	2.10	1.11	1.73
June 1992	4.01	2.36	1.74	0.95	1.46
Personal[3]					
September 1991	2.79	2.88	4.11	3.51	3.61
December 1991	3.16	3.02	4.21	3.61	3.76
March 1992	2.56	2.61	4.04	3.53	3.54
June 1992	2.42	2.44	3.73	3.30	3.30
Leases					
September 1991	1.84	1.28	2.25	1.26	1.58
December 1991	2.34	1.74	1.92	1.05	1.36
March 1992	2.54	1.57	2.23	0.87	1.33
June 1992	1.99	1.13	1.74	0.98	1.25
Other Loans					
September 1991	0.04	0.60	1.25	1.08	1.01
December 1991	0.02	0.60	1.32	0.77	0.83
March 1992	0.01	0.83	1.22	0.67	0.76
June 1992	0.03	0.93	0.79	0.56	0.59
Total loans					
September 1991	2.63	2.45	2.92	2.17	2.47
December 1991	2.71	2.38	2.90	2.31	2.54
March 1992	2.72	2.38	2.93	2.21	2.49
June 1992	2.26	2.04	2.58	1.94	2.18

[1]Past due loans in each category are stated as a percentage of loans outstanding of that type

[2]For banks with assets of less than $300 million, this category captures commercial (time and demand) and all other loans.

[3]For banks with assets of less than $300 million, this category captures installment loans and credit cards and related plans

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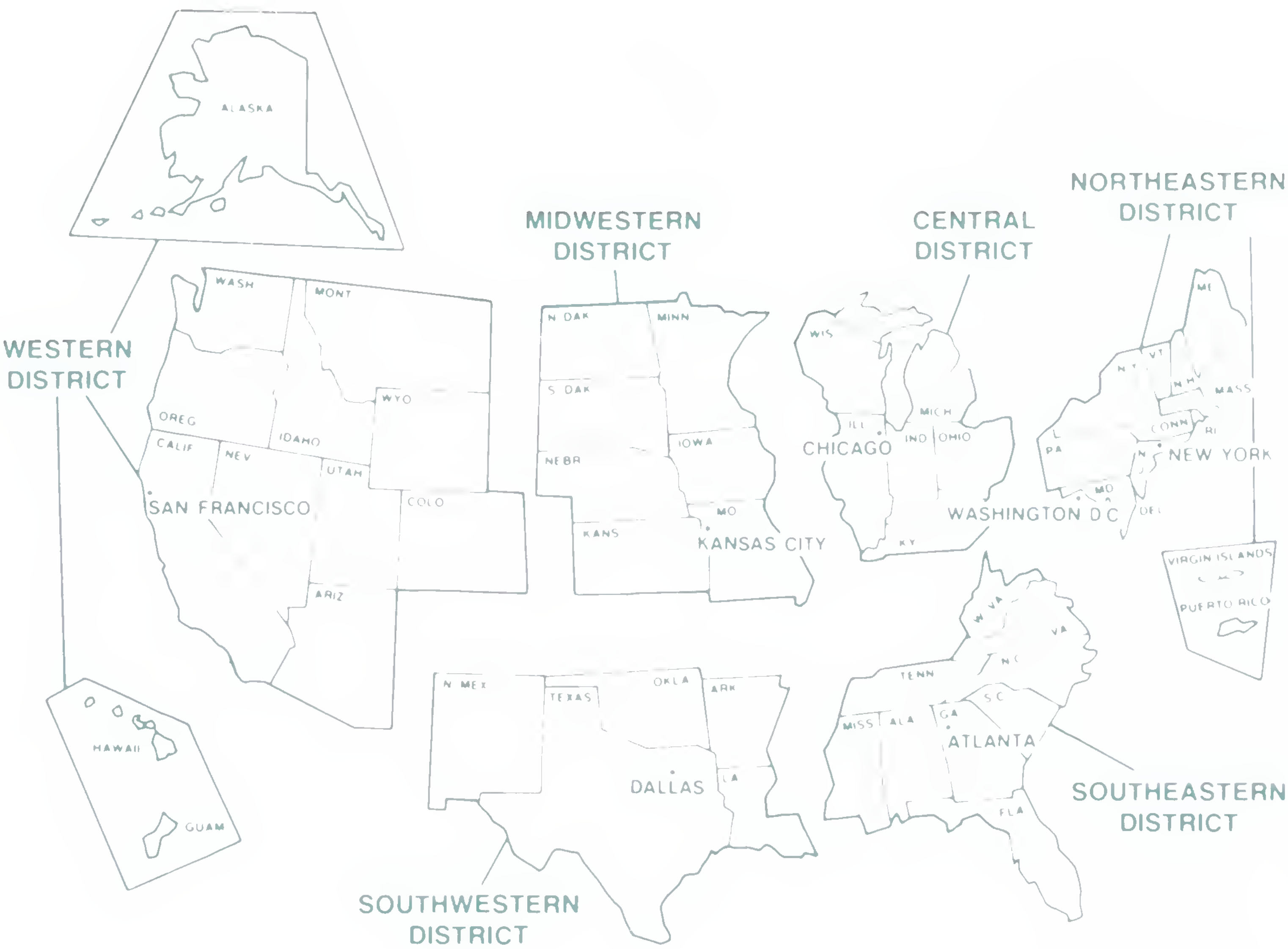

Northeastern District

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1114 Avenue of the Americas
Suite 3900
New York, NY 10036

(212) 819 9860

Central District

Chicago District Office
One Financial Place
Suite 2700
440 South LaSalle Street
Chicago, IL 60605

(312) 663 8000

Southwestern District

Dallas District Office
1600 Lincoln Plaza
500 North Akard
Dallas, TX 75201 3394

(214) 720 0650

Southeastern District

Atlanta District Office
Marquis One Tower
Suite 600
245 Peachtree Center Ave., N.E.
Atlanta, GA 30303

(404) 651 8855

Midwestern District

Kansas City District Office
2345 Grand Avenue
Suite 700
Kansas City, MO [illegible]

[illegible]

Western District

San Francisco District Office
50 Fremont Street
Suite 3900
San Francisco, CA [illegible]

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